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STATUTORY INSTRUMENTS

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**2006 No. 2310**

**TRANSPORT AND WORKS, ENGLAND**  
**TRANSPORT, ENGLAND**

The Borough of Poole (Poole Harbour  
Opening Bridges) Order 2006

*Made* - - - - 24th August 2006

*Coming into force* - - 14th September 2006

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 2000(1), for an Order under sections 3 and 5 of the Transport and Works Act 1992 Act(2) (“the Act”);

The Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of the Act.

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion 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).

The Secretary of State is satisfied that the provision of an alternative right of way for the street mentioned in article 8 of this Order is not required.

Notice of the Secretary of State’s determination was published in the London Gazette on 14th August 2006.

Accordingly, the Secretary of State in exercise of the powers conferred on him by sections 3 and 5 of, and paragraphs 1 to 4, 7, 8, 10, 11, 13, 15, 16 and 17 of Schedule 1 to, the Act and by article 2 of the Transport and Works (Description of Works Interfering with Navigation) Order 1992(4) makes the following Order:—

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(1) S.I.2000/2190.

(2) 1992 c. 42 as amended by S.I. 1995/1541, S.I. 1998/2226, S.I. 2000/3199 and S.I. 2006/958.

(3) 1964 c. 40.

(4) S.I. 1992/3230.

## PART 1

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the Borough of Poole (Poole Harbour Opening Bridges) Order 2006 and shall come into force on 14th September 2006.

#### Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961<sup>(5)</sup>;

“the 1965 Act” means the Compulsory Purchase Act 1965<sup>(6)</sup>;

“the 1980 Act” means the Highways Act 1980<sup>(7)</sup>;

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(8)</sup>;

“the 1990 Act” means the Town and Country Planning Act 1990<sup>(9)</sup>;

“the 1991 Act” means the New Roads and Street Works Act 1991<sup>(10)</sup>;

“the 2003 Act” means the Communications Act 2003<sup>(11)</sup>;

“the Application Rules” means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000, made under sections 6, 6A, 7 and 10 of the Transport and Works Act 1992;

“the authorised works” means the scheduled works and any other works authorised by this Order;

“the Back Water Channel” means the navigable channel between Holes Bay and Poole Harbour between reference points 401000E, 090200N and 400400E, 091350N;

“the Board” means Poole Harbour Bridges Operating Board;

“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;

“the bridges” means the new bridge and the existing bridge or either of them where the context so requires;

“the Commissioners” means Poole Harbour Commissioners;

“the Council” means the Council of the Borough and County of the Town of Poole;

“the deposited plans” means the plans prepared pursuant to rule 12(1)(a) and (3) of the Applications Rules and certified by the Secretary of State as “the deposited plans” for the purposes of this Order;

“the deposited sections” means the sections certified by the Secretary of State as “the deposited sections” for the purposes of this Order;

“designated area” means the lands shown on the deposited plans and numbered 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 42 and 46 in the Borough of Poole;

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<sup>(5)</sup> 1961 c. 33.

<sup>(6)</sup> 1965 c. 56.

<sup>(7)</sup> 1980 c. 66.

<sup>(8)</sup> 1981 c. 66.

<sup>(9)</sup> 1990 c. 8.

<sup>(10)</sup> 1991 c. 22.

<sup>(11)</sup> 2003 c. 21.

“the existing bridge” means the existing opening bridge crossing the Back Water Channel and known as Poole Bridge;

“footpath”, “highway” and “highway authority” have the same meanings as in the 1980 Act;

“the harbour master” means the harbour master appointed by the Commissioners and includes his authorised deputies and assistants and any person authorised by the Commissioners to act as harbour master;

“the level of high water” means the level of mean high water springs;

“the limits of deviation” means the limits of deviation for the scheduled works shown on the deposited plans;

“the limits of dredging” means the lines marked “limits of dredging” shown on the deposited plans;

“the limits of land to be acquired or used” means the limits of land to be acquired or used shown on the deposited plans;

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

“mooring” means any buoy, pile, post, chain, pillar, pontoon, fixed rail or like apparatus or convenience provided or used for the mooring of vessels;

“the new bridge” means the works referred to in Schedule 1 to this Order;

“the Order limits” means any limits of deviation, any limits of dredging and any additional limits of land to be acquired or used which are shown on the deposited plans;

“scheduled works” means the works specified in Schedule 1 to this Order or any part of them;

“street” includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“tidal work” means so much of any work authorised by this Order as is in, under or over tidal waters or tidal lands below the level of high water;

“the tribunal” means the Lands Tribunal;

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

“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(12).

(2) 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 arch or other construction forming part of any such land.

(3) References in this Order to points identified by letters shall be construed as references to the points so marked on the deposited plans.

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

(5) All distances, directions, lengths and reference points stated in the description of the scheduled works or in any descriptions of powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance, direction, length, reference point and distances between points on a scheduled work shall be taken to be measured along the scheduled work.

## PART 2

### WORKS PROVISIONS

#### *Principal powers*

#### **Power to construct etc. works**

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

(2) Subject to article 4, the scheduled works may only be constructed in the lines and situations shown on the deposited plans within the limits of deviation and in accordance with the levels shown on the deposited sections.

(3) The Council may operate the new bridge and may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) works to install, or alter the position of, apparatus, including mains, sewers, drains and cables; and
- (b) works for the benefit or protection of premises affected by the scheduled works.

#### **Power to deviate**

4.—(1) In constructing or maintaining the scheduled works, the Council may, subject to paragraph (2), deviate laterally from the lines or situations shown on the deposited plans to any extent within the limits of deviation and may deviate vertically from the levels shown on the deposited sections—

- (a) to any extent not exceeding 3 metres upwards as to any part of the scheduled works;
- (b) to any extent not exceeding 0.2 metre downwards as to the decking of the new bridge; and
- (c) to any extent downwards as to any other part of the scheduled works.

(2) In constructing the new bridge the Council shall provide headroom of not less than 2.5 metres above the level of high water over the central navigation channel.

#### **Power to make subsidiary works**

5.—(1) Subject to the provisions of this Order the Council may from time to time within the Order limits or on any land vested in the Council at the date of the making of this Order, construct and maintain, whether temporarily or permanently, all such works as may be requisite or expedient for the purposes of, or for purposes ancillary to, the construction, maintenance and use of the scheduled works.

(2) Without prejudice to the generality of paragraph (1), the Council may within the lands delineated on the deposited plans and thereon numbered 39 in the Borough of Poole construct and maintain a control centre for the purposes of operating the new bridge.

(3) Without prejudice to the generality of paragraph (1) the Council may within the designated area, for the purposes of or in connection with the construction, operation or maintenance of the scheduled works—

- (a) construct, place, alter, relocate or replace any work, mooring or structure whether temporary or permanent;
- (b) use, appropriate and dispose of any materials obtained by it in carrying out any such operations;

- (c) remove or relocate any mooring; and
- (d) temporarily moor or anchor vessels and structures and load and unload into and from such vessels or structures equipment, machinery, soil and any other materials in connection with the authorised works,

in such manner and to such extent as may appear to the Council to be necessary or convenient.

(4) Except in the case of emergency, the Council will use its reasonable endeavours to notify the owner of any mooring and the owner or master of any vessel or structure affected by the proposal to exercise the powers of paragraph (3)(a) or (c) before the exercise of those powers.

(5) The Council shall pay compensation to any person entitled to compensation under the 1961 Act who suffers any loss or damage from the exercise of the powers conferred by paragraph 3(a) and (c).

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

#### **Power to dredge for purposes of authorised works, etc.**

6.—(1) The Council, for the purposes of constructing and maintaining the scheduled works, may within the limits of dredging from time to time deepen, widen, dredge, scour, cleanse, alter and improve the bed of the Back Water Channel.

(2) Subject to paragraph (3), all materials dredged up or removed by the Council in exercise of the powers of this article shall be the property of the Council and may be used, sold, deposited or otherwise disposed of as the Council thinks fit.

(3) No such materials shall be laid down or deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or
- (b) in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Secretary of State.

#### *Streets*

#### **Power to execute street works**

7.—(1) The Council may, for the purposes of the authorised works, enter upon so much of West Quay Road and Wilkins Way in the Borough of Poole, and may—

- (a) break up or open the surface of either street, or any sewer, drain or tunnel under those streets, or tunnel or bore under those streets;
- (b) place apparatus in those streets;
- (c) maintain apparatus in those streets or change its position or remove it from those streets; and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

(2) This article is subject to paragraph 3 of Schedule 8 to this Order.

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

#### **Stopping up of streets and extinguishment of rights**

8.—(1) Subject to the provisions of this article, the Council may, in connection with the construction of the authorised works, stop up Wilkins Way in the Borough of Poole within the limits of deviation for the scheduled works.

- (2) Wilkins Way shall not be wholly or partly stopped up under this article unless either—
  - (a) the scheduled works have been completed to the reasonable satisfaction of the street authority and are open for use; or
  - (b) a temporary alternative route for the passage of such traffic as could have used Wilkins Way is first provided and thereafter maintained by the Council, to the reasonable satisfaction of the street authority, between the commencement and termination points of the street to be stopped up until completion of the new street in accordance with subparagraph (a).
- (3) Where Wilkins Way has been stopped up under this article—
  - (a) all rights of way over or along that part of Wilkins Way so stopped up shall be extinguished; and
  - (b) the Council may appropriate and use for the purposes of the authorised works so much of the site of Wilkins Way as is bounded on both sides by land owned by the Council.
- (4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (5) This article is subject to paragraph 2 of Schedule 8 to this Order.

### **Temporary stopping up of streets**

- 9.—(1) The Council, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any street and may for any reasonable time—
- (a) divert the traffic from the street; and
  - (b) subject to paragraph (2), prevent all persons from passing along the street.
- (2) The Council shall provide reasonable access for pedestrians going to or from premises abutting on a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.
- (3) Without prejudice to the generality of paragraph (1), the Council may exercise the powers conferred by this article in relation to Wilkins Way and West Quay Road in the Borough of Poole.
- (4) The Council shall not exercise the powers of this article—
- (a) in relation to any street specified as mentioned in paragraph (3) without first consulting the street authority; and
  - (b) in relation to any other street without the consent of the street authority, but such consent shall not be unreasonably withheld.
- (5) The provisions of the 1991 Act mentioned in paragraph (6) and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the Council under the powers conferred by this article where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the Council.
- (6) The provisions of the 1991 Act referred to in paragraph (5) are—
- section 54 (advance notice of certain works);
  - section 55 (notice of starting date of works);
  - section 59 (general duty of street authority to co-ordinate works);
  - section 60 (general duty of Councils to co-operate);
  - section 69 (works likely to affect other apparatus in the street);

section 76 (liability for cost of temporary traffic regulation);  
section 77 (liability for cost of use of alternative route); and  
all such other provisions as apply for the purposes of the provisions mentioned above.

#### **Access to works**

**10.** The Council may, for the purposes of the authorised works, form and lay out means of access or improve existing means of access in such locations within the limits of deviation shown on the deposited plans within the boundaries of the street in question, as the Council reasonably requires for the purposes of the authorised works and as may be approved by the highway authority but such approval shall not be unreasonably withheld.

#### **Construction and maintenance of new or altered streets**

**11.—(1)** Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of the Council for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the Council for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Council shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act.

(4) Nothing in this article shall have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

#### **Agreements with street authorities**

- 12.—(1)** A street authority and the Council may enter into agreements with respect to—
- (a) the construction of any new street under the powers conferred by this Order;
  - (b) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
  - (c) the execution in the street of any of the works referred to in article 7 (1).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
  - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

#### *Supplementary*

#### **Provisions relating to operation of bridges**

**13.—(1)** The Council shall open the bridges in accordance with the following provisions of this article for the purpose of facilitating navigation over the Back Water Channel.

(2) The bridges shall be opened by the Council on such occasions and for such period on each such occasion as may be specified in a programme which the Council shall determine from time to time in consultation with the Board.

(3) When determining the programme of openings required by paragraph (2) the Council shall allow for the reasonable requirements of vessels navigating, or seeking to navigate, over the Back Water Channel.

(4) Subject to paragraph (5), the Council shall also open the bridges on the date and at the time specified in a notice (whether written or not) given by the operator of any vessel over 40 metres in length which is to pass beneath the bridges, if that notice is given at least 24 hours before the day and time specified in that notice and in accordance with the requirements for giving such a notice specified in the arrangements published pursuant to paragraph (8).

(5) Where notice has been given pursuant to paragraph (4), the Council may delay the time at which the bridges are to be opened for up to half an hour after the time specified in that notice, if the Council is of the reasonable opinion that opening the bridges at the time specified in the notice would interfere unreasonably with the passage of vehicles, pedestrians, cyclists and other road users over the bridges and if the Council has on forming that opinion forthwith notified the operator of the vessel in question of the time at which the bridges will be opened.

(6) The requirement in paragraph (4) to give at least 24 hours' notice shall not apply where, in the case of an emergency, it is necessary for a vessel to navigate beneath the bridges; but in such a case the master of the vessel shall give such notice as is practicable and paragraph (5) shall not apply.

(7) Notwithstanding paragraph (4), the harbour master may at any time instruct the Council to open the bridges in stress of weather conditions, or in an emergency, or if in the reasonable opinion of the harbour master the opening of the bridges is required to preserve safe navigation within the Back Water Channel.

(8) The Council shall publish in notices displayed in a prominent position at each end of each of the bridges, and in such other positions as the Council deems advisable in order to attract the attention of those operating vessels and vehicles and of pedestrians, cyclists and other road users using the bridges, the arrangements made from time to time in relation to the opening of the bridges, including—

- (a) the procedure for opening the bridges in accordance with paragraphs (4) to (6); and
- (b) the address and telephone number of the person to whom the notice required by paragraph (4) is to be given.

### **Drainage of authorised works**

**14.—**(1) The Council may use the Back Water Channel or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for those purposes may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with any sewer or drain.

(2) Any dispute arising from the exercise of the powers in paragraph (1) to connect to or use a public sewer or drain shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(13).

(3) The Council shall not discharge any water into any public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.



(4) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 89(1), (2), or (3) of the Water Resources Act 1991(14).

(5) The Council shall not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld; and

(b) where the authority has been given the opportunity to supervise the making of the opening.

(6) The Council shall take such steps as are reasonably practicable to secure that any water discharged into the Back Water Channel or any public sewer or drain under 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.

(7) In this article—

(a) “authority” means either a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority;

(b) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

(c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

### **Protective works to buildings**

**15.**—(1) Subject to the following provisions of this article, the Council may at its own expense and from time to time carry out such protective works to any building within the Order limits as the Council considers to be necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or

(b) after the completion of the construction of that part of the authorised works in the vicinity of the building, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the Council may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the Council may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising a right—

(a) under paragraph (1) to carry out protective works to a building;

(b) under paragraph (3) to enter a building and land within its curtilage;

(c) under paragraph (4)(a) to enter a building or land within its curtilage; or

(d) under paragraph (4)(b) to enter land,

the Council shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise the right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 50.

(7) The Council shall compensate the owners and occupiers of any building or land in relation to which the powers of this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the authorised works,

the Council shall compensate the owners and occupiers of the buildings for any loss or damage sustained by them.

(9) Without prejudice to article 49, nothing in this article shall relieve the Council from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection;
- (b) “protective works”, in relation to a building means—
  - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
  - (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

### **Power to survey and investigate land**

**16.—**(1) The Council may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the Council thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on any such land;
- (d) place on, leave on and remove from the land included in sub-paragraph (a) apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and
- (e) enter on the land included in sub-paragraph (a) for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered, or equipment placed or left on or removed from land under paragraph (1) unless at least 7 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the Council—

(a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and

(b) may take with him such vehicles and equipment as are necessary to exercise any of the powers conferred by paragraph (1).

(4) No trial holes shall be made under this article in a carriageway or footway without the consent of the highway authority, but such consent shall not be unreasonably withheld.

(5) The Council shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Temporary closing of the Back Water Channel in connection with works**

17.—(1) Notwithstanding anything in any other enactment or in any rule of law, the Council may temporarily close the Back Water Channel, or any part thereof, to navigation in the course of executing any works or doing anything authorised by or under this Order.

(2) In exercise of the powers conferred by paragraph (1)—

(a) the Council shall execute such works or do such things as may be required to ensure that at any time no more of the Back Water Channel is closed than is reasonably necessary in all the circumstances; and

(b) should it be necessary at any time to close the whole of the Back Water Channel to navigation, the Council shall use its best endeavours to ensure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the Back Water Channel.

(3) Before exercising the power conferred by paragraph (1) the Council, after consulting the Commissioners, shall—

(a) publish a notice of its intention to do so in Lloyd's List and once in each of two successive weeks in a local newspaper published or circulating in the borough of Poole, with an interval between the dates of publication of not less than 6 clear days; and

(b) display notice of its intention in a conspicuous position adjacent to the Back Water Channel.

(4) Each of the notices required by paragraph (3) shall—

(a) state that the Council intends to execute the works or to do anything authorised by or under this Order (as the case may be) and for that purpose to close temporarily the Back Water Channel or such part of the Back Water Channel as is specified in the notice to navigation; and

(b) specify a date, which shall be a date not earlier than 14 days after the last date on which a notice is published pursuant to paragraph (3)(a), and the duration of the closure.

## PART 3 ACQUISITION AND POSSESSION OF LAND

### *Powers of acquisition*

#### **Power to acquire land**

**18.**—(1) The Council may acquire compulsorily—

- (a) so much of the land shown on the deposited plans within the limits of deviation and described in the book of reference as may be required for the purposes of the authorised works and not being land referred to in sub-paragraph (b); and
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 to this Order (being land shown on the deposited plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule;

and may use any land so acquired for those purposes or for any other purposes ancillary to the construction and maintenance of the authorised works.

(2) This article is subject to articles 21 and 23(8).

#### **Application of Part 1 of Compulsory Purchase Act 1965**

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

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

(2) Part 1 of the 1965 Act, as so applied, shall have effect as if—

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted; and
- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted—
  - (i) in a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, a reference to notice of one month; or
  - (ii) in any other case, a reference to notice of 3 months.

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

**20.**—(1) The 1981 Act shall apply as if this Order were a compulsory purchase order.

(2) The 1981 Act shall have effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 below with respect to any land which is subject to a compulsory purchase order the acquiring authority shall 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 shall be substituted “(1)” and after “given” there shall be inserted “and published”.

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

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

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) he 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 shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be 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)” shall be omitted.

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 18.

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

**21.**—(1) The Council may compulsorily acquire such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 18 as may be required for any purpose for which that land may be acquired under that provision, 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 to this Order), where the Council acquires a right over land under paragraph (1) the Council shall not be required to acquire a greater interest in it.

(3) Schedule 3 to this Order shall have 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.

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

**22.**—(1) The Council may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1)(a) or (b) of article 18 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) Subject to paragraph (3), where the Council acquires any part of the subsoil of land under paragraph (1) it shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent section 8 of the 1965 Act or article 26 from applying where the Council acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

### *Temporary possession of land*

#### **Temporary use of land for construction of works**

**23.**—(1) The Council may, in connection with the carrying out of the authorised works—

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

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

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

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

(5) The Council shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers 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, shall be determined under Part 1 of the 1961 Act.

(7) Without prejudice to article 49, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1) except that the Council shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 21; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 22.

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

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

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

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

- (a) enter upon and take temporary possession of any land within the limits of deviation and lying within 20 metres from that work if such possession is reasonably required for the purpose of, or in connection with, 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) shall not authorise the Council 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 Council shall serve notice of the intended entry on the owners and occupiers of the land.

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

(6) The Council shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers 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, shall be determined under Part 1 of the 1961 Act.

(8) Without prejudice to article 49, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) In this article—

- (a) “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; and
- (b) “building” includes structure or any other erection.

### *Compensation*

#### **Disregard of certain interests and improvements**

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

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

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with 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 he is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

### *Supplementary*

#### **Acquisition of part only of certain properties**

**26.**—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 19) in any case where—

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) If the Council agrees to take the land subject to the counter-notice, or if the tribunal determines 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 shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Council 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 that specified in the notice, the Council may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so shall pay the owner compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

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

### **Extinction or suspension of private rights of way**

**27.**—(1) All private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

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

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

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

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act or paragraph 2 of Schedule 8 to this Order applies.

### **Use of subsoil**

**28.**—(1) The Council may enter upon, take and use so much of the subsoil of any street within the limits of deviation or within the land the subject of paragraph (1)(a) and (b) of article 18 as may be required for the purpose of the construction or maintenance of the authorised works without being required to acquire that subsoil or any right therein.

(2) The Council shall not be required to pay any compensation for the exercise of the powers conferred by paragraph (1) where the street is a highway; but where the street is not a highway any person suffering loss by the exercise of that power shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(3) Paragraphs (1) and (2) shall not apply in relation to—

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

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

**29.**—(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 shall be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 19; and
- (b) no declaration shall be executed under section 4 of the 1981 Act as applied by article 20.

(2) The powers conferred by article 23 shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the Council 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 4**

### **PROVISIONS RELATING TO TIDAL WORKS**

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

**30.**—(1) A tidal work shall not be constructed, altered, replaced or re-laid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him 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 Council at its own expense to remove the tidal work and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Council, 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, he may remove the tidal work and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Council.

#### **Lights on tidal works**

**31.**—(1) The Council shall, at or near a tidal work during the whole time of the construction, alteration, replacement or relaying thereof, 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 or the Commissioners or, failing agreement between them, the Secretary of State shall from time to time direct.

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

#### **Provision against danger to navigation**

**32.**—(1) In the case of injury to, or destruction or decay of, a tidal work or any part thereof the Council shall as soon as reasonably practicable notify Trinity House and the Commissioners and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to

navigation as Trinity House or the Commissioners or, failing agreement between them, as Trinity House may from time to time direct.

(2) If the Council fails to notify Trinity House and the Commissioners as required by paragraph (1) or to comply with any requirement of a direction under it, the Council shall be 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**

**33.**—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State or the Commissioners may by notice in writing require the Council at its own expense either to repair and restore the work or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as either of them 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 the Commissioners may include that part of the work, or any portion thereof, in any notice under paragraph (1).

(3) If, at the end of 30 days from the date when a notice under this article is served upon the Council, it has failed to comply with the requirements of the notice, the Secretary of State or the Commissioners may execute the work specified in the notice and any expenditure incurred by either of them in so doing shall be recoverable from the Council.

#### **Survey of tidal works**

**34.** If either of them deems it expedient, the Secretary of State or the Commissioners 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 work, and any expenditure incurred by either of them in relation to any such survey and examination shall be recoverable from the Council.

#### **Permanent lights on tidal works**

**35.**—(1) After the completion of a tidal work the Council shall at the outer extremity thereof 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 or the Commissioners or, failing agreement between them, as Trinity House may from time to time direct.

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

#### **Obstruction of authorised works and misuse of new bridge**

**36.** Any person who without lawful authority or excuse—

- (a) obstructs another person from constructing any of the authorised works;
- (b) closes or opens the bridges; or
- (c) in any other way interferes with the bridges or their operation,

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

### **Removal of vessels**

**37.**—(1) If it appears to the Council necessary or convenient to do so for the purposes of the construction or maintenance of the authorised works, or to enable vessels to navigate through the Back Water Channel, it may, having first consulted the harbour master, remove from within the designated area, any vessel that is—

- (a) sunk, stranded or abandoned; or
- (b) moored or laid up (whether lawfully or not),

either to another place within the designated area or to a place outside the designated area where it may without injury to the vessel be moored or laid.

(2) Before exercising the powers conferred by paragraph (1) the Council shall—

- (a) publish a notice of its intention to do so in Lloyd’s List and once in each of two successive weeks in a local newspaper published or circulating in the borough of Poole, with an interval between the dates of publication of not less than 6 clear days; and
- (b) display notice thereof in a conspicuous position adjacent to Back Water Channel.

(3) Each of the notices shall—

- (a) state the reason for requiring removal of any vessel from within that part of the designated area specified in the notice; and
- (b) specify a date, which shall be a date not earlier than one month after the last date on which a notice is published pursuant to paragraph (2)(a), by which all vessels must be removed from within that part of the designated area specified in the notice.

(4) If the owner or master of any vessel within the designated area does not remove that vessel from within the designated area before the date specified in accordance with paragraph (3)(b), the Council may, having first consulted the harbour master, cause that vessel to be removed.

(5) The Council may recover as a debt from the owner of any vessel removed pursuant to paragraph (4) all expenses incurred by the Council in respect of its removal.

### **Removal of obstructions**

**38.**—(1) If any obstruction is caused to the operation of opening or closing the bridges by any object being left on the bridges, the person in charge of the object shall remove it forthwith; and if he fails to do so the Council may take all reasonable steps to remove the obstruction and may recover the expenses reasonably incurred in doing so from—

- (a) any person by whom the object was put or left so as to become an obstruction to the operation of the bridges; or
- (b) any person who was the owner of the object at that time unless he shows that he was not, at that time, concerned in or aware of the object being so put or left.

(2) Paragraph (1) shall not apply to any obstruction to passage over any part of the bridges which forms part of a highway which shall be subject to proceedings under either section 137 or 149 of the 1980 Act.

## PART 5

### MISCELLANEOUS AND GENERAL

#### Power to make byelaws

**39.**—(1) The Council may make byelaws regulating the use and operation of the bridges and the conduct of all persons passing over the bridges or of all vessels passing through the opening spans thereof or otherwise navigating or mooring within the designated area.

(2) Without prejudice to the generality of paragraph (1), byelaws made under this article may make provision—

- (a) with respect to interference with, or obstruction of, the operation of the bridges;
- (b) for prohibiting or restricting the placing or leaving of any object on any part of the bridges; and
- (c) for prohibiting the mooring of vessels alongside any part of the bridges or otherwise within such part of the designated area specified in any notice published and displayed by the Council in the manner specified in article 37(2).

(3) Byelaws made 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.

(4) Any byelaw made under this article may require the payment, on application for any consent, licence or other authorisation required by the byelaw, of such reasonable fees as the Council may determine.

(5) The provisions of sections 236(3) to (8) and (11) and 238 of the Local Government Act 1972<sup>(16)</sup> (which relate to the procedure for making, and evidence of, byelaws) shall apply to any byelaws made by the Council under this article.

(6) The said section 236, in its application to any byelaws made under this article, shall be modified—

- (a) by the insertion at the end of subsection (4) of the words “and in Lloyd’s List or some other newspaper specialising in shipping news”; and
- (b) subject to paragraph (7), by the insertion in subsection (7) of the words “with or without modifications” after the word “confirm” in the second place where that word occurs.

(7) Where the confirming authority proposes to make a modification which appears to it to be substantial, then—

- (a) it shall inform the Council and require it to take any steps which the confirming authority considers to be necessary for informing persons likely to be concerned with the modification; and
- (b) it shall not confirm the byelaws until such period has elapsed as it thinks reasonable for the consideration of, and comment upon, the proposed modification by the Council and by any other persons who have, or are likely to have, been informed of it.

(8) The confirming authority for the purposes of the said section 236 in its application to byelaws made under this article shall be the Secretary of State.

(9) Where a person is charged with an offence against a byelaw in force under this article, it shall be a defence for the person to prove—

- (a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence; or

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(16) 1972 c. 70.

- (b) that he had a reasonable excuse for his act or failure to act.

### **Saving for Trinity House**

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

### **Protection of Poole Harbour Commissioners**

41. For the protection of Poole Harbour Commissioners, Schedule 5 shall have effect.

### **Further protection of Poole Harbour Commissioners and users of the Back Water Channel**

42. For the further protection of the Commissioners and users of the Back Water Channel, the scheme of arrangements specified in Schedule 6 to this Order shall be binding upon the Council and the Commissioners and effect shall be given thereto save that—

- (a) the terms of paragraphs 2 to 4 of Schedule 6 to this Order may, with the consent of the Secretary of State, be varied in writing between the Council and the Commissioners; and
- (b) the terms of paragraphs 5 to 13 of Schedule 6 to the Order may be varied in writing between the Council and the Commissioners.

### **For the protection of the Environment Agency**

43. For the protection of the Environment Agency, Schedule 7 to this Order shall have effect.

### **Statutory undertakers, etc.**

44. The provisions of Schedule 8 to this Order shall have effect.

### **Management arrangements**

45.—(1) The Council may enter into and carry into effect agreements with respect to the construction, maintenance, use, management and operation by any other person of the authorised works, and any other matters incidental or subsidiary thereto or consequential thereon, including the defraying of, or the making of contributions towards, the cost thereof by the Council or by any other person.

(2) Any agreement under paragraph (1) may provide for the exercise by another person of the powers of the Council in respect of the authorised works.

(3) The Council may at any time lease the authorised works to another person on such terms and conditions as may be agreed.

(4) The exercise of the powers of the Council in respect of the authorised works by any person pursuant to any agreement under paragraph (1) shall be subject to the restrictions, liabilities and obligations applicable under this Order in relation to the exercise of those powers by the Council and in accordance with any restrictions, liabilities and obligations entered into by the Council in connection with this Order.

### **Repeals and revocations**

46.—(1) Upon the date of coming into effect of this Order, the enactments mentioned in columns (1) and (2) of Part 1 of Schedule 9 to this Order (which include spent enactments) shall be repealed or revoked to the extent specified in column (3) of that Part of that Schedule.

(2) Upon the date of coming into effect of byelaws made under section 236(7) of the Local Government Act 1972 as applied by article 39(5), the enactments regulating the operation of the existing bridge mentioned in columns (1) and (2) of Part 2 of Schedule 9 to this Order (which include spent enactments) shall be repealed or revoked to the extent specified in column (3) of that Part of that Schedule.

### **Certification of plans, etc.**

47. The Council shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited sections and the deposited plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, sections and plans referred to in this Order, and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

48.—(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) subject to paragraphs (5), (6), (7) and (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(17) as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he 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, his 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 him 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 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 shall be taken to be fulfilled where the recipient of the notice or other document to be transmitted has given his 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 he requires a paper copy of all or any part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) A person may revoke his 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 he shall—

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(17) 1978 c. 30.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (a) give notice in writing revoking any consent given by him for that purpose; and
  - (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.
- (9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

**No double recovery**

**49.** Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

**Arbitration**

**50.** Any difference under any provision of this Order, unless otherwise provided for, shall 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 notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State

*Ellis Harvey*  
Head of the Transport and Works Act Orders  
Unit,  
Department for Transport

24th August 2006



## SCHEDULES

### SCHEDULE 1

Article 3

#### SCHEDULED WORKS

In the Borough of Poole—

An opening (bascule) bridge, approach spans and road across the Back Water Channel, Poole, supported on reinforced concrete supports commencing on the east side of the Back Water Channel at reference point 400484E, 090711N and extending in a westerly direction for a distance of 296 metres and terminating on the west side of the Back Water Channel at reference point 400739E, 090562N.

### SCHEDULE 2

Article 18

#### ACQUISITION OF CERTAIN LAND

| <i>(1)</i><br>Area | <i>(2)</i><br>Number of land shown on the deposited plans | <i>(3)</i><br>Purpose for which land may be acquired   |
|--------------------|---|--|
| Borough of Poole   | 4, 11, 12, 15, 16, 17, 18, 19 and 20                      | Access for construction and maintenance of the authorised works.   |
|                    | 23 and 24   | The removal of structures required in connection with the authorised works.  |
|                    | 28, 29, 30 and 32   | The carrying out of dredging works.  |
|                    | 30, 31, 32 and 33   | The provision of permanent mooring facilities.   |
|                    | 34, 35, 40, 43, 44 and 45                                 | The provision of mooring facilities for temporary use and the provision of access for construction and maintenance purposes. |

## SCHEDULE 3

Article 21

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

*Compensation enactments*

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall 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 prejudice to the generality of paragraph 1, the Land Compensation Act 1973<sup>(18)</sup> shall have 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) for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there shall be 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 shall be substituted the words “a right over land consisting”;
- (b) for the word “severance” there shall be 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 shall be substituted the words “right proposed”; and
- (d) for the words “part is” there shall be substituted the words “right is”.

*Adaptation of the 1965 Act*

3.—(1) The 1965 Act shall have 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 prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply 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 shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which

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(18) 1973 c. 26.

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 his, 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 (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) there shall be substituted the following—

(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 person satisfies the tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land; and—

(i) where the land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or

(ii) where the 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 Borough of Poole (Poole Harbour Opening Bridges) Order 2006(19) (“the Order”) shall, in relation to that person cease to authorise the purchase of the right and 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 park or garden, the house to which it belongs, and the notice shall 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 shall 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 six 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) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall 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.

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(19) S.I. 2006/2310.

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7. Section 11 of the 1965 Act (powers of entry) shall be 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 purposes of exercising that right (which shall 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 shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will etc.) shall apply 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) shall be 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 23

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

| <i>(1)</i><br><b>Area</b> | <i>(2)</i><br><b>Number of land shown on deposited plans</b> | <i>(3)</i><br><b>Purpose for which temporary possession may be taken</b>          |
|---------------------------|--|---|
| Borough of Poole          | 36a, 37 and 38 41  | Temporary construction access.<br>Working site and temporary construction access. |

SCHEDULE 5

Article 41

PROTECTION OF POOLE HARBOUR COMMISSIONERS

1. For the protection of the Commissioners, the following provisions shall have effect and shall apply save as otherwise agreed in writing between the Council and the Commissioners.

2. In this Schedule—

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

“the Channel” means the Back Water Channel;

“construction” includes execution, placing and maintenance and “constructed” shall be construed accordingly;

“erosion” means any erosion of the bed or banks of the Channel or other structure of whatever nature; and

“plans” includes arrangements, sections, descriptions, drawings and specifications.

3. Section 20(1) of the Poole Harbour Act 1914(20) (which requires works to be licensed by the Commissioners in accordance with that Act) shall not apply in the case of the authorised works.

4. The Council shall at all reasonable times during construction of the authorised works and thereafter allow the Commissioners, their servants and agents, access to those works and all reasonable facilities for inspecting any tidal work.

5. After the purpose of any temporary works has been accomplished, or after a reasonable period of notice in writing from the Commissioners requiring it so to do, the Council shall with all reasonable dispatch, remove any such temporary works or any materials relating thereto which may have been placed above or below the level of high water by or on behalf of the Council and, on its failing so to do within a reasonable period after receiving such notice, the Commissioners may remove the same and charge the Council with the reasonable expense of so doing, which expense the Council shall repay to the Commissioners.

6. If, during the construction of a tidal work or within 10 years after the completion of such work and as a consequence (whether in whole or in part) of its construction, there is caused or created an accumulation or erosion, the Council, if so requested by the Commissioners before or within the period of 10 years after such completion or exercise, shall remedy such accumulation or erosion in the manner specified in paragraph 8 and, if it refuses or fails so to do, the Commissioners may themselves cause the work to be done and may recover the reasonable cost thereof from the Council.

7. Should any accumulation or erosion in consequence of such construction arise within the period of 10 years mentioned in paragraph 6 and be remedied in accordance with paragraph 8, any recurrence of such accumulation or erosion shall from time to time be so remedied by the Council during that period of 10 years and at any time thereafter, save that the Council's obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion a period of 10 years elapses from the completion of that remedying, without any further accumulation or erosion being caused or created in consequence of such construction or exercise.

8. For the purpose of paragraphs 6 and 7—

- (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.

9. In the event that surveys, inspections, tests and sampling carried out pursuant to paragraph 12(b) establish that any accumulation or erosion mentioned in paragraphs 6 or 7 would have been caused in any event by factors other than the construction of a tidal work, the Council shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction as aforesaid.

10. For the purposes of paragraph 6 the date of completion of a work shall be the date on which it is brought into use.

11. The Council shall—

- (a) pay to the Commissioners the reasonable costs incurred by the Commissioners of such alterations to the marking and lighting of the navigational channel of the Channel as may be necessary during or in consequence of the construction of a tidal work;
- (b) provide and maintain on any tidal works such fog signalling apparatus as may be reasonably required by the Commissioners and shall properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the relevant works; and

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- (c) afford to the Commissioners such facilities as they may reasonably require for the placing and maintenance on any tidal works of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

**12.** Without prejudice to the other provisions of this Schedule, the Council shall be responsible for, and make good to the Commissioners, all losses, costs, charges, damages and expenses however caused (including a proper proportion of the overhead charges of the Commissioners) which may reasonably be incurred or occasioned to the Commissioners by reason of or arising from or in connection with—

- (a) the inspection of any of the tidal works by the Commissioners or their duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within and of the Channel (including the bed and banks of the Channel)—
  - (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of the river as the authority have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the Council is liable to remedy under this Schedule; and
  - (ii) where the Commissioners have reasonable cause to believe that the construction of any of the tidal works is causing or has caused any siltation, scouring or other alteration as aforesaid;
- (c) the construction of any of the tidal works or the failure of any of the tidal works or the undertaking by the Commissioners of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such construction, exercise or failure; and
- (d) any act or omission of the Council or its servants or agents whilst engaged in the construction or operation of any of the tidal works.

**13.** Without prejudice to the generality of paragraph 12, the Council shall indemnify the Commissioners from and against all claims and demands arising out of, or in connection with, such construction, exercise, failure or act or omission as is mentioned in that paragraph.

**14.** Nothing in this Schedule shall impose any liability on the Council to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in paragraphs 12 and 13 are attributable to negligence on the part of the Commissioners or of any person in their employ or of their contractors or agents.

**15.** The Commissioners shall give to the Council notice of any claim or demand in relation to which the Council may be liable under this Schedule and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the Council.

**16.** The fact that any work or thing has been executed or done with the consent of the Commissioners and in accordance with any conditions or restrictions prescribed by the Commissioners or in accordance with any directions or award of an arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by him shall not relieve the Council from any liability under the provisions of this Schedule.

**17.** With the exception of any duty owed by the Commissioners to the Council which is expressly provided for in the foregoing provisions of this Schedule, nothing in this order shall be construed as imposing upon the Commissioners either directly or indirectly, any duty or liability to which the Commissioners would not otherwise be subject and which is enforceable by proceedings before any court.

18. Save as provided in paragraph 3, nothing in this Order shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the Commissioners or the harbour master at the date of making of this Order.

## SCHEDULE 6

Article 42

### FURTHER PROTECTION OF POOLE HARBOUR COMMISSIONERS AND USERS OF THE BACK WATER CHANNEL

#### *Scheme of arrangements for establishment of Poole Harbour Bridges Operating Board*

1. The Council shall establish the Board in exercise of the powers conferred upon the Council by section 111 of the Local Government Act 1972(21).
2. The Council shall consult the Board on all matters affecting the management and operation of the bridges.
3. The Council shall take into consideration any matter, recommendation or representation which may from time to time be referred or made to it by the Board.
- 4.—(1) The Board shall consist of five persons.  
(2) Two persons shall be appointed by the Council of whom—
  - (a) one shall represent the local police authority;
  - (b) one shall represent the local highway authority.  
(3) Three persons shall be appointed by the Commissioners of whom—
  - (a) two shall represent harbour users; and
  - (b) one shall represent the Commissioners.
5. Appointments to the Board shall be made in accordance with a scheme prepared by the Council.
6. The Board may determine its own quorum and procedure and shall appoint a Chairman, who shall make arrangements for the Board to meet not less than twice a year.
7. If at any meeting of the Board the Chairman is not present the members present at the meeting shall choose one of their number to be the Chairman of the meeting.
8. Every question at a meeting of the Board shall be decided by a majority vote of the Board members present and voting.
9. If at any meeting of the Board there is an equality of votes on any question the Chairman shall have a second or casting vote which he may exercise for or against the status quo.
10. A member of the Board shall hold office for the period of 3 years from the date of his appointment and at the end of that period shall be eligible for reappointment.
11. A member of the Board may resign his office at any time by notice in writing given to the Chief Executive of the Council.
12. If the Board is satisfied that a member—
  - (a) has, without reasonable excuse, been absent from 2 consecutive meetings of the Board; or

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(21) 1972 c. 70.

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- (b) has become bankrupt or made an arrangement with his creditors; or
- (c) is incapacitated by physical or mental illness from discharging the functions of a member;  
or
- (d) is otherwise unable, unwilling or unfit to discharge the functions of a member;

the Board may declare his office as a member to be vacant and thereupon his office shall become vacant.

**13.** The Council shall make such facilities available to the Board for the conduct of its business as the Council shall determine necessary in order for the Board to carry out its functions.

## SCHEDULE 7

Article 43

### PROTECTION OF THE ENVIRONMENT AGENCY

**1.** The following provisions shall, unless otherwise agreed in writing between the Environment Agency (in this article referred to as “the Agency”) and the Council, have effect.

**2.** In this Schedule—

“accumulation” means any accumulation of silt or other material;

“completion” in relation to a work means the date on which it is brought into use;

“construction” includes execution and placing, altering, replacing, relaying and removal and “construct” and “constructed” have corresponding meanings;

“drainage work” means any bank, wall or embankment of the Back Water Channel and any outfall or other structure or appliance constructed or used for land drainage, defence against sea water or tidal monitoring;

“erosion” means any erosion of the bed or shore of the Back Water Channel;

“the fishery” means the Back Water Channel and fish in, or migrating to or from, the Back Water Channel, and the spawn, habitat or food of such fish;

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

“specified work” means any permanent or temporary work or operation authorised by this Order (which includes any dredging and any exploratory geotechnical investigations that may be undertaken); and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers, and passages through which water flows (whether or not the flow is intermittent) except a public sewer within the meaning of the Water Industry Act 1991<sup>(22)</sup>.

**3.—(1)** Before beginning to construct any specified work, the Council shall submit to the Agency plans of the work and such further particulars available to it as the Agency may reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency or as settled in accordance with paragraph 13.

(3) Any approval of the Agency required under this paragraph—

(i) shall not be unreasonably withheld;

(ii) shall be deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval; and

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(22) 1991 c. 56.



(iii) may be given subject to such reasonable requirements as the Agency may impose for the protection of any drainage work or fishery or water resources, for the prevention of flooding and water pollution and in the discharge of its environmental and recreational duties.

(4) Any specified work, and all protective works required by the Agency under sub-paragraph (3), shall be constructed—

- (a) within such period (if any) as the Agency may consent to at the time of approval or upon an application by the Council thereafter (such consent not to be unreasonably withheld); and
- (b) to the reasonable satisfaction of the Agency;

and the Agency shall be entitled by its officers to watch and inspect the construction of such works.

4. The Council shall give to the Agency notice in writing of the commencement of any specified work not less than 14 days prior to its commencement and notice in writing of its completion not later than 7 days after such completion.

5.—(1) If any part of the works comprising a structure in, over or under a drainage work is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing to the Council require the Council, at the Council's own expense, to comply with the requirements of this Schedule or (if the Council so elects and the Agency in writing consents, such consent not to be unreasonably withheld) to alter the work to the reasonable satisfaction of the Agency.

(2) Subject to sub-paragraph (3), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (1) is served on the Council, it has failed to begin taking steps to comply with the requirements of the notice and thereafter to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the Council.

(3) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which a notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not, except in emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined.

6.—(1) If, during the construction of any specified work, or within 10 years after the completion of such work, there is caused or created an accumulation or erosion or an alteration to tidal flow which in whole or in part is reasonably attributable to the construction of such work and which causes damage or reasonable expectation of damage, the Council shall, if so required by the Agency before or within the period of 10 years after such completion and to the extent that it is so attributable, remedy such accumulation or erosion or alteration to tidal flow in the manner specified in sub-paragraph (4) and, if it refuses to do so, the Agency may itself cause such remedy to be carried out and may recover the reasonable cost of so doing from the Council.

(2) Should any accumulation or erosion or alteration of tidal flow arise which causes such damage or reasonable expectation of damage arise within the said period of 10 years and be required to be remedied in accordance with sub-paragraph (1), any continuation or recurrence of such accumulation or erosion shall to the extent that it is reasonably attributable to the construction or operation of any specified work be so remedied by the Council during the said period of 10 years and at any time thereafter, save that the Council's obligation under this sub-paragraph shall cease in the event that following the remedying of any accumulation or erosion or alteration of tidal flow a period of 10 years elapses without any further accumulation or erosion or alteration of the tidal flow.

(3) In sub-paragraphs (1) and (2) and in paragraph 7(5) "damage" means any damage or any adverse effect upon the structure or operation of any outfall, flood or sea defences or any jetty or other structure under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991(23).

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(23) 1991 c. 57.

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(4) For the purposes of sub-paragraphs (1) and (2)—

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

(5) To the extent that the Council establishes by surveys, inspections, tests or sampling that such accumulation or erosion or alteration of tidal flow referred to in paragraphs (1) or (2) would have been caused in any event by factors other than the construction or operation of a specified work, the Council shall not be liable to remedy such accumulation or erosion or alteration of tidal flow.

(6) In carrying out any surveys, inspections, tests or sampling under sub-paragraph (5) the Council shall not unreasonably delay the execution of any remedial action required under sub-paragraphs (1) or (2).

7.—(1) Subject to sub-paragraph (2), the Council shall from the commencement of the construction of the specified works and except to the extent that any approval given by the Agency under this Schedule permits otherwise, maintain in good repair and condition and free from obstruction any drainage work which is situated on land owned by the Council or which it has control of or is in occupation of for the purposes of or in connection with the construction of the specified works.

(2) The obligation imposed on the Council under sub-paragraph (1) does not apply where the Agency or another person is liable to maintain any such drainage work and is not precluded by the exercise of the powers of the Order from doing so.

(3) If any such specified work is no longer required by the Council or is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Council at the Council's own expense to repair and restore the drainage work, or any part thereof, or (if the Council so elects and the Agency consents, such consent not to be unreasonably withheld) to remove the specified work and restore the site (including any sea defences) to its former condition, to such an extent and within such limits as the Agency reasonably requires.

(4) If, on the expiration of 30 days from the date on which a notice is served upon the Council it has failed to comply with the requirements of the notice, the Agency may execute the works specified in the notice, and any expenditure incurred by it in so doing shall be recoverable from the Council.

(5) If by reason of the construction of any specified work or by reason of the failure of that work or of the Council to maintain it, the efficiency of any drainage work for flood defence purposes is impaired or that work is damaged, such impairment or damage shall be made good by the Council to the reasonable satisfaction of the Agency and, if the Council fails to do so, the Agency may make good the same and recover from the Council the expense reasonably incurred by it in so doing.

8.—(1) The Council shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused the Agency may serve notice on the Council requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Council fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Council the expense reasonably incurred by it in doing so.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Council the reasonable cost of so doing provided that notice specifying those steps is served on the Council as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

**9.—**(1) The Council shall indemnify the Agency in respect of all reasonable costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Schedule; and
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Schedule.

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

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence, or
- (b) any damage to the fishery, or
- (c) any raising or lowering of the water table in land adjoining the authorised works or any sewers or watercourses, or
- (d) any flooding or increased flooding of any such lands,

which is caused by, or results from, the construction of any of the works or any act or omission of the Council, its contractors, agents or employees whilst engaged upon the work.

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

**10.** The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not (if it was done without neglect or default on behalf of the Agency, of any person in its employ or of its contractors or agents) relieve the Council from any liability under the provisions of this Schedule.

**11.** Nothing in paragraph 7(5) or 9(2) shall impose any liability on the Council in respect of accumulation or erosion or alteration of the tidal flow other than such accumulation or erosion or alteration of the tidal flow which the Council is liable to remedy under paragraph 6(1) or (2).

**12.** Except as otherwise provided by this Schedule nothing in this Order shall prejudice or affect in their application to the Agency the powers, rights, jurisdiction and obligations conferred, arising or imposed under the Land Drainage Act 1991<sup>(24)</sup>, the Salmon and Freshwater Fisheries Act 1975<sup>(25)</sup>, the Water Resources Act 1991<sup>(26)</sup> or any other enactment, byelaw or regulation relating to the Agency.

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<sup>(24)</sup> 1991 c. 59.

<sup>(25)</sup> 1975 c. 51.

<sup>(26)</sup> 1991 c. 56.

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13.—(1) Unless the parties agree to arbitration any difference arising between the Council and the Agency shall be settled by the Secretary of State for Environment, Food and Rural Affairs on a reference to him by either party after notice in writing to the other.

(2) Subject to sub-paragraph (1), any difference arising between the Council and the Agency under this Schedule (other than a difference as to its meaning or construction) shall be referred to and settled by a single arbitrator appointed by agreement between the parties on reference to him by either party, after notice in writing to the other, or, in default of agreement, by the President of the Institution of Civil Engineers.

## SCHEDULE 8

Articles 7, 8 and 44

### PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

#### *Apparatus of statutory undertakers, etc., on land acquired*

1.—(1) Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land acquired or appropriated by the Council under this Order subject to the following provisions of this paragraph; 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) shall have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-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 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the Council compensation in respect of expenditure reasonably incurred by him, 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) Sub-paragraph (3) shall 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,

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

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which paragraph 2 below or Part 3 of the 1991 Act applies.

(6) In this paragraph—

“public utility undertakers” has the same meaning as in the 1980 Act; and

“public communications provider” has the same meaning as in section 151(1) of the 2003 Act.

*Apparatus of statutory undertakers, etc., in stopped up streets*

2.—(1) Where a street is stopped up under article 8 of this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under article 8 of this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street may and, if reasonably requested so to do by the Council, shall—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it, or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as aforesaid.

(3) Subject to the following provisions of this paragraph, the Council shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of relocation works required in consequence of the stopping up of the street, and
- (b) the doing of any other work or thing rendered necessary by the execution of relocation works.

(4) If in the course of the execution of relocation works under sub-paragraph (2)—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Council, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) shall be reduced by the amount of that excess.

(5) For the purposes of sub-paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus, and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Sub-paragraphs (3) to (6) shall not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—

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- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section, and
- (b) the allowable costs shall be borne by the Council and the statutory utility in such proportions as may be prescribed by any such regulations.
- (8) In this paragraph—
- “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- “relocation works” means works executed, or apparatus provided, under sub-paragraph (2); and
- “statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider.

#### *Navigation undertakings*

3.—(1) Subject to the following provisions of this paragraph, the powers under article 7 of this Order to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act) is under the control or management of, or is maintainable by, a navigation authority, except with the consent of that authority.

(2) Sub-paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purposes of sub-paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock.

## SCHEDULE 9

Article 46

### REPEALS AND REVOCATIONS

#### PART 1

| <i>(1)</i><br>Chapter or number           | <i>(2)</i><br>Title   | <i>(3)</i><br>Extent of repeal or revocation |
|---|---|--|
| 4 <a href="#">William 4 c.xlvi (1834)</a> | An Act for building a Bridge over the Water from the Town and County of the Town of Poole to the Parish of Hamworthy in the County of Dorset, with an Approach thereto. | Section 7                                    |
| <a href="#">1965 c.xxx</a>                | Poole Corporation Act 1965  | Section 4                                    |

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| <i>(1)</i><br><b>Chapter or number</b> | <i>(2)</i><br><b>Title</b>                                  | <i>(3)</i><br><b>Extent of repeal or revocation</b> |
|--|---|---|
|  | The Poole Bridge (Variation of Times of Opening) Order 1992 | The whole Order.                                    |

## PART 2

| <i>(1)</i><br><b>Chapter or number</b>   | <i>(2)</i><br><b>Title</b> | <i>(3)</i><br><b>Extent of repeal or revocation</b> |
|--|----------------------------|---|
| <a href="#">9 &amp; 10 Geo.5. c.xliv</a> | Poole Corporation Act 1919 | Sections 31, 32 and 33                              |

### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order authorises the Council of the Borough and County of the Town of Poole to construct, operate and maintain a second opening bridge across the Back Water Channel in Poole, Dorset.

The Order also provides for the construction and maintenance of subsidiary works and powers for the compulsory acquisition of land and rights in land for the purpose of the authorised works. The Order further provides for the temporary closure of the Back Water Channel in connection with the construction and maintenance of the new bridge, the creation of offences for obstruction of the works to be authorised by the Order, the removal of vessels and obstructions, the making of byelaws for the regulation and operation of the new bridge and the existing opening bridge across the Back Water Channel and the conduct of persons using them. The Order confers protection upon Poole Harbour Commissioners and users of the Back Water Channel, the carrying into effect of agreements for the management of the bridges and incidental, supplemental and consequential matters.

Copies of the plans, sections and book of reference relating to the Order are available for inspection at the offices of the Borough of Poole, Civic Centre, Poole, Dorset BH15 2RU.