
STATUTORY INSTRUMENTS

2017 No. 1329

The Boston Barrier Order 2017

PART 2

WORKS PROVISIONS

Supplementary powers and provisions

Protective works

21.—(1) Subject to the following provisions of this article, the Agency may at its own expense, and from time to time carry out such protective works to any building lying within the Order limits as the Agency 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, 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 purposes of determining how the functions under this article are to be exercised the Agency may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage and place on, leave on and remove from the land monitoring apparatus.

(4) For the purposes of carrying out protective works under this article to a building the Agency may (subject to paragraphs (5) and (6)) with all necessary plant and equipment—

- (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, enter the adjacent land,

and in either case the Agency may take exclusive possession of the building and land if this is reasonably required for the purpose of carrying out the protective works.

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building;
- (c) a right under paragraph (4)(a) to enter and take possession of a building or land; or
- (d) a right under paragraph (4)(b) to enter and take possession of land,

the Agency must, 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 that 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 as to whether it is necessary or expedient to carry out the protective works or to enter and take possession of the building or land to be referred to arbitration under article 67 (arbitration).

(7) The Agency must compensate the owners and occupiers of any building or land in relation to which the powers conferred by 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 latter of—
 - (i) the day on which those parts of the authorised works constructed within the vicinity of the building first open for use; or
 - (ii) the day on which completion of the protective works takes place,
 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 works,

the Agency must compensate the owners and occupiers of the building for any damage sustained by them.

(9) Without affecting article 68 (no double recovery), nothing in this article relieves the Agency from any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act.

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

(11) In this article—

- (a) “building” includes any walls comprised within the Wet Dock; and
- (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;
 - (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; and
 - (iii) any works the purpose of which is to secure the safe operation of the authorised works or to prevent or minimise the risk of such operation being disrupted.

Commencement Information

II Art. 21 in force at 2.1.2018, see [art. 1](#)

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Boston Barrier Order 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

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

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