
STATUTORY INSTRUMENTS

2017 No. 1329

The Boston Barrier Order 2017

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

4.—(1) The Agency may—

- (a) construct and maintain the scheduled works; and
- (b) break out and remove such structures that are contained within the limits of deviation as may be necessary or expedient for or in connection with the construction or maintenance of the scheduled works.

(2) Subject to article 5 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works plan and in accordance with the levels shown on the sections.

(3) Subject to paragraph (6), the Agency may carry out and maintain such of the following works as may be necessary or expedient for the purpose of, or for purposes ancillary, to the construction of the scheduled works, namely—

- (a) works to erect and construct such offices and other buildings, yards, machinery, plant, apparatus, and other works, and conveniences as the Agency thinks fit;
- (b) works to construct, provide and maintain all such embankments, retaining walls, fencing, shafts, drainage works, culverts and other works as may be necessary or convenient;
- (c) works for the strengthening, improvement, maintenance or reconstruction of any street;
- (d) works for the strengthening, alteration or demolition, in whole or in part, of any building;
- (e) works to remove or alter the position of any street furniture or apparatus, including mains, sewers, drains, pipes, cables and lights;
- (f) works to alter the course of, or otherwise interfere with, watercourses;
- (g) means of access, including footpaths;
- (h) the felling of trees;
- (i) earthworks required for the carrying out of the authorised works;
- (j) landscaping, ecological and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works; and
- (k) replacement facilities and works for the benefit or protection of land or premises affected by the authorised works.

(4) Subject to paragraph (6) the Agency may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

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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. (See end of Document for details)

(5) The Agency may remove any works constructed by it under this Order which have been constructed as temporary works or which it no longer requires.

(6) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works—

(a) within the Order limits; or

(b) within the boundaries of any street abutting the Order limits or which has a junction with such a street.

(7) The powers conferred by this article may not be exercised within the boundaries of a street outside of the Order limits without the consent of the street authority, such consent not to be unreasonably withheld or delayed.

(8) Where the Agency lays down conduits for the accommodation of cables or other apparatus for the purposes of or associated with the authorised works it may provide in, or in connection with, such conduits, accommodation for the apparatus of any other person, and manholes and other facilities for access to such accommodation, and may permit the use of such conduits and facilities on such terms and conditions as may be agreed between it and such other person.

(9) The authorised works may be constructed and maintained under the powers of this article regardless of anything contained in or done pursuant to Part 1 of, or Schedule 2 to, the Commons Act 2006(1).

Commencement Information

II Art. 4 in force at 2.1.2018, see [art. 1](#)

Power to deviate

5.—(1) Subject to paragraph (3), in constructing or maintaining any of the scheduled works, the Agency may deviate—

(a) laterally from the lines or situations shown on the works plan to any extent within the limits of deviation; and

(b) vertically from the levels shown on the sections to any extent upwards or downwards.

(2) Without limiting the scope of paragraph (1), in constructing or maintaining the scheduled works the Agency may, within the limits mentioned in paragraph (1)—

(a) deviate from their points of commencement and termination as shown on the Order plans; and

(b) deviate from the design shown on the Order plans.

(3) The scheduled works must be constructed so that the unobstructed opening between the walls of the barrier, as shown on the Order plans, measures 25 metres wide.

(4) Nothing in paragraphs (3) or (4) of article 4 (power to construct and maintain works) authorises the Agency to execute any works in contravention of the restrictions imposed by paragraph (3).

Commencement Information

I2 Art. 5 in force at 2.1.2018, see [art. 1](#)

Works and operations in the river

Power to dredge etc.

6.—(1) The Agency may deepen, dredge and remove obstructions from the bed, foreshore and banks of, the river—

- (a) for the purposes of the construction, operation or maintenance of the scheduled works and any other ancillary purposes; or
- (b) for the purpose of facilitating the navigation of vessels.

(2) The powers conferred by this article are only exercisable with the prior written consent of the Harbour Authority, such consent not to be unreasonably delayed or withheld.

(3) The Agency must pay compensation to all persons for any damage sustained by them by reason of the exercise by the Agency of its powers under paragraph (1) and the amount of the compensation to be paid, where not agreed, is to be determined by the tribunal.

(4) The Agency may use, appropriate or sell or otherwise dispose of anything (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995⁽²⁾) removed in exercise of the powers conferred in paragraph (1).

Commencement Information

I3 Art. 6 in force at 2.1.2018, see [art. 1](#)

Works and dredging etc. in the river

7.—(1) Without affecting the other powers conferred by this Order or otherwise available to it, the Agency may within the river area for the purposes of or in connection with the construction, maintenance or operation of the authorised works and despite any interference with any public or private rights—

- (a) alter, clean, dismantle, refurbish, remove, relocate or replace any work or structure;
- (b) carry out excavations and clearance, dredging, deepening, scouring, cleansing, dumping and pumping operations;
- (c) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995) obtained by it in carrying out any such operations;
- (d) remove or relocate any mooring;
- (e) direct the owner or master of any vessel or structure sunk, stranded or abandoned or moored or left (whether lawfully or not) to remove or relocate it and, if there be no person aboard any such vessel or structure to attend to such direction, to do so itself;
- (f) 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 construction of the authorised works;
- (g) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of the river; and
- (h) construct, place and maintain works and structures including piled fenders and protection piles,

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

(2) 1995 c. 21.

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(2) Except in the case of an emergency, the Agency 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 conferred by paragraph (1)(d) or (e) before the exercise of that power.

(3) All expenses incurred by the Agency in removing or relocating a vessel or structure under paragraph (1)(e) are to be paid to the Agency by the owner or master of the vessel or structure.

(4) A person may not without the consent in writing of the Agency (which may be given subject to conditions)—

- (a) use, for the purpose of landing or embarking persons or landing or loading goods from or into any vessel, any work constructed or used in connection with the authorised works; or
- (b) remove, move or otherwise interfere with any work, machinery, apparatus, tools or other things in use or intended for use in constructing the authorised works.

(5) A person who without reasonable excuse contravenes paragraph (4), or fails to comply with any conditions attached to a consent given by the Agency under that paragraph, is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) The power to dredge conferred by paragraph (1)(b) includes the power to carry out such additional dredging as may be required to provide side slopes or otherwise secure the dredged area against siltation, scouring or collapse.

Commencement Information

I4 Art. 7 in force at 2.1.2018, see [art. 1](#)

River not to be a reservoir

8. Regardless of the provisions of section A1 of the Reservoirs Act 1975⁽³⁾, no part of the river as is impounded by the scheduled works is, by virtue of the retention of water by means of the scheduled works, to be taken to be a reservoir for the purposes of that Act.

Commencement Information

I5 Art. 8 in force at 2.1.2018, see [art. 1](#)

Streets and rights of way

Power to execute street works

9. The Agency may, for the purposes of and to the extent necessary for the construction of the authorised works, enter upon so much of any existing path or street as is within the Order limits and any street abutting the Order limits or which has a junction with such a street and may break up or open the path or street, or any sewer, drain, or tunnel under it, or tunnel or bore under the path or street.

Commencement Information

I6 Art. 9 in force at 2.1.2018, see [art. 1](#)

(3) [1975 c. 23](#). Section A1 was inserted by section 33 of the Flood and Water Management Act [2010 \(c. 29\)](#).

Power to keep apparatus in streets

10.—(1) The Agency may, for the purposes of the construction, maintenance or alteration of the authorised works, alter, move, remove, place and maintain in any street within the Order limits any work, equipment or apparatus including foundations, road islands, substations, electric lines and any electrical or other apparatus.

(2) In this article—

- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- (b) “electric line” has the meaning given by section 64(1) (Interpretation etc. of Part 1) of the Electricity Act 1989(4); and
- (c) the reference to any work, equipment or apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

Commencement Information

17 Art. 10 in force at 2.1.2018, see [art. 1](#)

Power to alter layout, etc., of streets

11.—(1) The Agency may for the purposes of the authorised works alter the layout of or carry out any ancillary works in any street within the Order limits and the layout of any street abutting the Order limits or which has a junction with such a street and without limitation on the scope of this power the Agency may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street;
- (d) carry out works for the provision, removal, suspension or alteration of parking places, loading bays, bus lanes, bus stop clearway and bus laybys; and
- (e) execute any works to provide or improve sight lines required by the highway authority.

(2) The powers conferred by paragraph (1) in relation to any street abutting the Order limits or which has a junction with such a street must not be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(3) If a street authority which receives an application for consent under paragraph (2) fails to notify the Agency of its decision before the end of the period of 28 days beginning with the date on which the application was made, that authority is deemed to have granted consent.

Commencement Information

18 Art. 11 in force at 2.1.2018, see [art. 1](#)

Temporary stopping up and diversion of streets

12.—(1) The Agency may, during and for the purposes of the execution of the authorised works, temporarily stop up, alter or divert any street and may for any reasonable time—

(4) 1989 c. 29.

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- (a) divert the traffic from the street; and
 - (b) subject to paragraph (2), prevent all persons from passing along the street.
- (2) Without limitation on the scope of paragraph (1), the Agency may use any street stopped up under the powers conferred by this article within the Order limits as a temporary working site.
- (3) The Agency must provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.
- (4) Without limitation on the scope of paragraph (1), the Agency may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 2 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule.
- (5) The Agency must not exercise the powers conferred by this article—
- (a) in relation to any street specified in Schedule 2 (streets to be temporarily stopped up) without first consulting the street authority; and
 - (b) in relation to any other street, without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.
- (6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (7) If a street authority which receives an application for consent under paragraph (5)(b) fails to notify the Agency of its decision before the end of the period of 28 days beginning with the date on which the application was made, that authority is deemed to have granted consent.

Commencement Information

I9 Art. 12 in force at 2.1.2018, see [art. 1](#)

Access to works

- 13.**—(1) The Agency may, for the purposes of the authorised works—
- (a) form and lay out means of access, or alter or improve existing means of access, in the locations marked with an ‘A’ on the Order plans; and
 - (b) form and lay out such other means of access or alter or improve existing means of access at such locations within the Order limits as the Agency reasonably requires for the purposes of the authorised works, as may be approved by the highway authority, but such approval must not be unreasonably withheld.
- (2) If a highway authority which receives an application for approval under paragraph (1)(b) fails to notify the Agency of its decision before the end of the period of 28 days beginning with the date on which the application was made, that authority is deemed to have granted approval.

Commencement Information

II0 Art. 13 in force at 2.1.2018, see [art. 1](#)

Agreements with street authorities

- 14.**—(1) A street authority and the Agency may enter into agreements with respect to—
- (a) the strengthening or improvement of any street under the powers conferred by this Order;

- (b) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised railway;
 - (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
 - (d) the execution in the street of any of the works referred to in article 9 (power to execute street works).
- (2) Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) provide 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 such other matters as the parties consider appropriate.

Commencement Information

I11 Art. 14 in force at 2.1.2018, see [art. 1](#)

Use of private roads for construction

15.—(1) The Agency may use any private road within the Order limits or any private road abutting the Order limits which has a junction with such a road for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised works.

(2) The Agency must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 of the 1961 Act.

Commencement Information

I12 Art. 15 in force at 2.1.2018, see [art. 1](#)

Supplementary powers and provisions

Agreements with owners of land and others for construction of works

16.—(1) The Agency may enter into and carry into effect agreements or arrangements with the Harbour Authority and the owners of, or other persons interested in, any land in or through which any of the authorised works are or may be constructed, or the drainage of which may be affected by the construction of any of the authorised works, for or with respect to the doing of anything which may be necessary in order to carry out, or in consequence of, the authorised works.

- (2) Without limitation on the scope of paragraph (1), any such agreement may provide for—
- (a) the payment by the Agency of, or the making of contributions by it towards, the cost incurred, or to be incurred, by the Harbour Authority and any such owners or other persons in or in connection with the doing of any such thing; or
 - (b) the payment by the Agency of compensation for any injury suffered or loss incurred by the Harbour Authority and any such owners or other persons by reason or in consequence of the execution by the Agency of the authorised works, or entry upon land.

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Commencement Information

I13 Art. 16 in force at 2.1.2018, see [art. 1](#)

Temporary closing of river in connection with works

17.—(1) Regardless of anything in any other enactment or in any rule of law, the Agency may temporarily close the river or any part of it within the limits of deviation, to navigation during or for the purposes of executing any works or doing anything authorised by or under this Order.

(2) In exercising the powers conferred by this article, the Agency must seek to minimise interference with navigation on the river so far as is reasonably practicable and consistent with the efficient and economical execution of the works.

(3) The Agency must not exercise the powers conferred by paragraph (1) so as—

- (a) to preclude access from the river to the Wet Dock; or
- (b) to close all or part of the river in connection with an activity referred to in paragraph (4) for a period longer than that specified in that paragraph,

without the consent of the Harbour Authority (such consent not to be unreasonably withheld or delayed) and must in any event, unless the Harbour Authority agrees otherwise, give the Harbour Authority not less than 7 days' advance notice of any closure provided always that nothing in this paragraph affects the Agency's exercise of its powers under article 44 (power to operate scheduled works).

(4) The periods specified for the purposes of paragraph (3) are—

- (a) in connection with constructing works, a maximum period in respect of any one closure of 2 days;
- (b) in connection with maintaining works, one period of up to 12 hours within any one month.

(5) Subject to paragraph 11 of Schedule 8 (protection of Port of Boston) neither the Agency nor the Harbour Authority is to be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the river under paragraph (1).

Commencement Information

I14 Art. 17 in force at 2.1.2018, see [art. 1](#)

Diversion of flow of water

18. The Agency may by means of the authorised works divert, intercept, stop up or otherwise interfere with the waters of, or the flow of water in, the river.

Commencement Information

I15 Art. 18 in force at 2.1.2018, see [art. 1](#)

Power to take, pump, impound and discharge water

19.—(1) The Agency may take, impound and use water from, and discharge water into, the river, and may pump any water required by it from or into the river or pump any water found by it into the river or into any watercourse, public sewer, or drain in connection with the construction

or maintenance of the authorised works and for those purposes may lay down, take up and alter conduits, pipes and other works and conveniences and may, on any land within the limits of deviation, make openings into, and connections with, the river, or any watercourse, public sewer or drain.

(2) Any dispute arising from the exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991⁽⁵⁾.

(3) The Agency must not, in exercise of the powers conferred by this article—

- (a) discharge any water into any public sewer or drain except with the consent (which is not to be unreasonably withheld) of the person to whom it belongs and subject to such terms and conditions as that person may reasonably impose; and
- (b) make any opening into any public sewer or drain except in accordance with plans reasonably approved by and under the superintendence (if provided) of the person to whom the sewer or drain belongs.

(4) Nothing in this article obviates any requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016⁽⁶⁾.

(5) The Agency must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain in exercise of 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.

(6) If a person who receives an application for consent or approval fails to notify the Agency of a decision within 28 days of receiving the application for consent under sub-paragraph (3)(a) or approval under sub-paragraph (3)(b) then that person is deemed to have granted consent or approval, as the case may be.

(7) In this article “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Agency, a harbour authority, an internal drainage board, a local authority, or a joint planning board.

(8) In this article, other than references to “public sewer or drain” or “watercourse”, expressions used both in this article and in the Water Resources Act 1991⁽⁷⁾ have the same meaning as in that Act.

Commencement Information

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

Water abstraction and impounding

20.—(1) The restriction imposed by section 24(1)⁽⁸⁾ (restrictions on abstraction) of the Water Resources Act 1991 does not apply in relation to the abstraction of water for the purposes of, or in connection with, the construction of the authorised works.

(2) Section 25 (restrictions on impounding)⁽⁹⁾ of the Water Resources Act 1991 does not apply in relation to anything done in the exercise of the powers conferred by this Order with respect to the authorised works.

(5) [1991 c. 56](#).

(6) [S.I. 2016/1154](#).

(7) [1991 c. 57](#).

(8) Section 24(1) was amended by [S.I. 1996/593](#).

(9) Section 25 was amended by section 2 of the Water Act 2003 and [S.I. 2013/755](#).

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(3) Section 48A(1) (civil remedies for loss or damage due to water abstraction)(10) of the Water Resources Act 1991 does not apply in relation to the abstraction of water in connection with the exercise of the powers conferred by this Order.

(4) Where—

- (a) the Agency causes loss or damage to another person by the abstraction of water in connection with the exercise of the powers conferred by this Order; and
- (b) the circumstances are such that causing the loss or damage would have constituted breach of the duty under section 48A(1) of the Water Resources Act 1991, but for paragraph (3), the Agency must compensate the other person for the loss or damage.

(5) Compensation under paragraph (4) is to be assessed on the same basis as damages for the breach of the duty under section 48A(1) of the Water Resources Act 1991.

(6) Section 48A(5) of the Water Resources Act 1991 (prohibition of claims in respect of loss or damage caused by abstraction of water which are not claims under that section) has no application to claims under this article.

(7) In this article, “abstraction” has the same meaning as in the Water Resources Act 1991.

Commencement Information

I17 Art. 20 in force at 2.1.2018, see [art. 1](#)

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;

(10) Section 48A was inserted by section 24(1) of the Water Act 2003 (c. 37).

- (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

I18 Art. 21 in force at 2.1.2018, see [art. 1](#)

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Planning permission

22. Any planning permission which is deemed by a direction given under section 90(2A) (development with government authorisation)(**11**) of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3) (a) (cases in which land is to be treated as operational land) of that Act.

Commencement Information

I19 Art. 22 in force at 2.1.2018, see [art. 1](#)

Power to survey and investigate land, etc.

23.—(1) The Agency may for the purposes of this Order and in respect of land lying within the Order limits—

- (a) survey or investigate any such land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the Agency thinks fit on such land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
- (d) take steps to protect or remove any flora or fauna on such land where the flora or fauna may be affected by the carrying on of the authorised works;
- (e) place on, leave on and remove from such land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (d); and
- (f) enter on such land for the purpose of exercising any of the powers conferred by sub-paragraphs (a) to (e).

(2) No land may be entered, or equipment placed or left on or removed from the 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 Agency—

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make trial holes.

(4) No trial holes are to be made under this article—

- (a) in a carriageway or footway without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The Agency must 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.

(6) If either a highway authority which receives an application for consent under paragraph (4) (a) or a street authority which receives an application for consent under paragraph (4)(b) fails to notify the Agency of its decision within 14 days of receiving the application for consent under paragraph (4), that authority is deemed to have granted consent.

(11) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act [1992 \(c. 42\)](#).

Commencement Information

I20 Art. 23 in force at 2.1.2018, see [art. 1](#)

Felling or lopping of trees

24.—(1) The Agency may fell or lop any trees or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or
- (b) from constituting a danger to persons using the authorised works.

(2) In exercising the powers conferred by paragraph (1), the Agency must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Commencement Information

I21 Art. 24 in force at 2.1.2018, see [art. 1](#)

Status:

Point in time view as at 02/01/2018.

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.