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## STATUTORY INSTRUMENTS

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# 2017 No. 1329

## The Boston Barrier Order 2017

### PART 2

#### WORKS PROVISIONS

##### *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**

**II** 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

**I2** 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

**I3** 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<sup>(1)</sup>.

(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<sup>(2)</sup>.

(1) 1991 c. 56.

(2) S.I. 2016/1154.

(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<sup>(3)</sup> have the same meaning as in that Act.

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#### Commencement Information

**I4** Art. 19 in force at 2.1.2018, see [art. 1](#)

### Water abstraction and impounding

**20.**—(1) The restriction imposed by section 24(1)(4) (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)<sup>(5)</sup> 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.

(3) Section 48A(1) (civil remedies for loss or damage due to water abstraction)<sup>(6)</sup> 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.

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<sup>(3)</sup> 1991 c. 57.

<sup>(4)</sup> Section 24(1) was amended by [S.I. 1996/593](#).

<sup>(5)</sup> Section 25 was amended by section 2 of the Water Act 2003 and [S.I. 2013/755](#).

<sup>(6)</sup> Section 48A was inserted by section 24(1) of the Water Act 2003 ([c. 37](#)).

### Commencement Information

**I5** 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;
- (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

**I6** Art. 21 in force at 2.1.2018, see [art. 1](#)

### Planning permission

**22.** Any planning permission which is deemed by a direction given under section 90(2A) (development with government authorisation)(7) 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

**I7** 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;

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

- (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.

#### Commencement Information

**I8** 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.

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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) [View outstanding changes](#)

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#### Commencement Information

**I9** Art. 24 in force at 2.1.2018, see [art. 1](#)

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

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