

**2017 No. 1329**

**TRANSPORT AND WORKS, ENGLAND**

**The Boston Barrier Order 2017**

*Made* - - - - - *12th December 2017*

*Coming into force* - - - - - *2nd January 2018*

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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 2006<sup>(a)</sup> for an Order under sections 3(1)(b) and 5 of the Transport and Works Act 1992<sup>(b)</sup> (“the 1992 Act”).

The Secretary of State caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State 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<sup>(c)</sup>.

Notice of the Secretary of State’s determination was published in the London Gazette on 4th December 2017.

The Secretary of State makes the following Order in exercise of the powers conferred by sections 3(1)(b) and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11, 13 and 15 to 17 of Schedule 1 to, the 1992 Act and by article 2 of the Transport and Works (Descriptions of Works Interfering with Navigation) Order 1992<sup>(d)</sup>.

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the Boston Barrier Order 2017 and comes into force on 2nd January 2018.

#### **Interpretation**

2.—(1) In this Order—

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

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

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

“the 1984 Act” means the Road Traffic Regulation Act 1984<sup>(h)</sup>;

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

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(a) S.I. 2006/1466.  
(b) 1992 c. 42. Section 5 was amended by S.I. 2012/1659.  
(c) 1964 c. 40.  
(d) S.I. 1992/3230 as amended by S.I. 1997/2906.  
(e) 1961 c. 33.  
(f) 1965 c. 56.  
(g) 1980 c. 66.  
(h) 1984 c. 27.  
(i) 1990 c. 8.

“the 1991 Act” means the New Roads and Street Works Act 1991(a);

“address” includes any number or address used for the purposes of electronic transmission;

“the Agency” means the Environment Agency;

“the authorised works” means the scheduled works and any other works or operations authorised by this Order, or any part of them;

“the barrier” means the barrier comprised in Work No.1;

“the Black Sluice Complex” means the existing complex known locally by that name and located at London Road, Boston;

“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;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“enactment” means any enactment, whether public, general or local and includes any order, byelaw, rule, regulation, direction, scheme or other instrument having effect by virtue of an enactment;

“flood gates” means the flood gates comprised in Work Nos. 3A, 4A and 4B;

“footway” has the same meaning as in the 1980 Act;

“harbour authority” has the same meaning as in the Harbours Act 1964(b);

“the Harbour Authority” means Port of Boston Limited (registered company number 02198182) being the harbour authority for the Port of Boston, and includes its harbour master and statutory successors;

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

“internal drainage board” has the same meaning as in Part 1 of the Land Drainage Act 1991(c);

“the land plans” means the land plans included within the Order plans and certified by the Secretary of State as the land plans for the purposes of this Order;

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

“the limits of deviation” means the limits of lateral deviation for the scheduled works referred to in article 5 (power to deviate);

“the limits of land for protective works” means the limits so shown and described on the land plans;

“the limits of land to be used only temporarily” means the limits so shown and described on the land plans;

“local authority” has the same meaning as in Part 1 of the Local Government Act 2000(d);

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

“the Maud Foster Sluice” means the existing Grade II listed sluice known by that name and located at Windsor Bank, Boston;

“Order limits” means the limits of deviation, the limits of land for protective works and the limits of land to be used only temporarily;

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(a) 1991 c. 22.  
(b) 1964 c. 40.  
(c) 1991 c. 59.  
(d) 2000 c. 22.

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

“owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981(a);

“Port of Boston” means the harbour undertaking of Port of Boston Limited vested in it by the Boston Harbour Revision Order 1989(b);

“the public rights of way plan” means the public rights of way plan included within the Order plans and certified by the Secretary of State as the public rights of way plan for the purposes of this Order;

“the river” means the river Witham, also known (downstream of the existing sluice known locally as Grand Sluice and located at Fydell Street, Boston) as the Haven or the Boston Haven;

“the river area ” means so much of the river as lies within the Order limits;

“the scheduled works” means the works specified in Schedule 1 (scheduled works) or any part of them;

“the sections” means the sections included within the Order plans;

“sewerage undertaker” has the same meaning as in Part 1 of the Water Industry Act 1991(c);

“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, on, under or over tidal waters or tidal lands below the level of high water;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

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

“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(d);

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer or drain;

“the Wet Dock” means the existing Wet Dock located within the Port of Boston; and

“the works plan” means the works plan included within the Order plans and certified by the Secretary of State as the works plan for the purpose of this Order.

(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 above its surface and references to the subsoil of any land include references to any cellar, basement, vault, arch or other construction forming part of any such land.

(3) Any reference in this Order to a work identified by a number of the work is a reference to the work of that number referred to in Schedule 1 (scheduled works).

(4) References in this Order to numbered plots are references to plot numbers shown on the Order plans.

(5) References in this Order to reference points are construed as references to Ordnance Survey National Grid Reference points.

(6) References in this Order to points identified by letters, or letters and numbers, are to be construed as references to points on the Order plans.

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(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c.34). There are other amendments to section 7 which are not relevant to the Order.

(b) S.I. 1989/2036.

(c) 1991 c. 56.

(d) 1968 c. 59.

(7) All distances, directions, lengths, points and areas stated in the description of the scheduled works or in any description of powers or lands are approximate and distances between points on a scheduled work are to be taken to be measured along the scheduled work.

### **Application of 1991 Act**

**3.**—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway must be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 (dual carriageways and roundabouts)(a) of the 1980 Act or section 184 (vehicle crossings)(b) of that Act.

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned must, in relation to works which are major transport works by virtue of paragraph (1), be construed as references to the Agency.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- section 56 (directions as to timing)(c);
- section 56A (power to give directions as to placing of apparatus)(d);
- section 58 (restrictions following substantial road works)(e);
- section 58A (restriction on works following substantial street works)(f);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing etc. of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (restriction on works following substantial street works)(g).

(4) The provisions of the 1991 Act mentioned in paragraph (5) which, together with other provisions of that Act, apply in relation to the execution of street works and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the Agency under the powers conferred by article 12 (temporary stopping up and diversion of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(h) referred to in paragraph (4) are—

- section 54 (advance notice of certain works)(i) subject to paragraph (6);
- section 55 (notice of starting date of works)(j) subject to paragraph (6);

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(a) Section 64 was amended by Schedule 17 to the Local Government Act 1965 (c. 51) and Schedule 9 to the 1991 Act.

(b) Section 184 was amended by section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and Schedule 8 to the New Roads and Street Works Act 1991 (c. 22) and sections 35 and 46 of the Criminal Justice Act 1982 (c. 48).

(c) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(d) Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).

(e) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(f) Section 58A was inserted by section 52 of the Traffic Management Act 2004 (c. 18).

(g) Schedule 3A was inserted by Schedule 4 to the Traffic Management Act 2004 (c. 18).

(h) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(i) As also amended by section 49(1) of the Traffic Management Act 2004 (c. 18).

(j) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004 (c. 18).



section 57 (notice of emergency works)(a);  
section 59 (general duty of street authority to co-ordinate works)(b);  
section 60 (general duty of undertakers to co-operate);  
section 68 (facilities to be afforded to street authority);  
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.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Part 3 (Permit Schemes) of the Traffic Management Act 2004(c) and any permit scheme made under that Part do not apply in relation to any works executed under this Order.

## 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;

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(a) As also amended by section 52(3) of the Traffic Management Act 2004 (c. 18).

(b) As amended by section 42 of the Traffic Management Act 2004 (c. 18).

(c) 2004 c. 18.

- (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.

(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(a).

### **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).

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(a) 2006 c. 26.

**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(a)) removed in exercise of the powers conferred in paragraph (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) 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.

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(a) 1995 c. 21.

(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.

### **River not to be a reservoir**

8. Regardless of the provisions of section A1 of the Reservoirs Act 1975<sup>(a)</sup>, 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.

### *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.

### **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<sup>(b)</sup>; 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.

### **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—

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(a) 1975 c. 23. Section A1 was inserted by section 33 of the Flood and Water Management Act 2010 (c. 29).

(b) 1989 c. 29.

- (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.

### **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—

- (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.

### **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.

#### **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.

#### **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.

#### *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.

### **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).

### **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.

### **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(a).

(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.

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(a) 1991 c. 56.

(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>(a)</sup>.

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

### **Water abstraction and impounding**

**20.**—(1) The restriction imposed by section 24(1)(c) (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>(d)</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>(e)</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.

### **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—

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(a) S.I. 2016/1154.

(b) 1991 c. 57.

(c) Section 24(1) was amended by S.I. 1996/593.

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

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



- (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.

### **Planning permission**

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

### **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.

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(a) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

(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.

#### **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.

## **PART 3**

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

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

**25.**—(1) Unless its construction has commenced within 5 years of the coming into force of this Order, a tidal work must not be constructed, altered or replaced except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State 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 Agency at its own expense to remove the tidal work or any part of it and restore the site to its former condition; and if, on the expiration of a period of 30 days from the date on which the notice is served, 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, the Secretary of State may remove the tidal work, or part of it, and restore the site to its former condition,

and any expenditure reasonably incurred by the Secretary of State in so doing is recoverable from the Agency.

#### **Lights on tidal works during construction**

**26.**—(1) The Agency must, at or near a tidal work during the whole time of its construction, alteration or replacement, 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 and the Harbour Authority or (failing agreement between them) the Secretary of State may from time to time direct.

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

### **Provisions against danger to navigation**

27.—(1) In the case of injury to, or destruction or decay of, a tidal work or any part of it the Agency must as soon as reasonably practicable notify Trinity House and the Harbour Authority and lay down such buoys, exhibit such lights, if any, and take such other steps, if any, for preventing danger to navigation as Trinity House and the Harbour Authority or (failing agreement between them) Trinity House may from time to time direct.

(2) If the Agency fails to notify Trinity House and the Harbour Authority as required by paragraph (1) or to comply with any requirement of a direction under it, the Agency is 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**

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

(3) If, on the expiration of a period of 30 days from the date on which a notice under this article is served, the Agency has failed to comply with the requirements of the notice, the Secretary of State or the Harbour Authority may execute the work specified in the notice and any expenditure reasonably incurred by the Secretary of State or the Harbour Authority in so doing is recoverable from the Agency.

### **Survey of tidal works**

29. If the Secretary of State or the Harbour Authority deems it expedient, the Secretary of State or the Harbour Authority 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 tidal work, and any expenditure reasonably incurred by the Secretary of State or the Harbour Authority in relation to any such survey and examination is recoverable from the Agency.

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

30.—(1) After the completion of a tidal work the Agency must at its outer extremity 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 and the Harbour Authority or (failing agreement between them) Trinity House may from time to time direct.

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

## PART 4

### ACQUISITION AND POSSESSION OF LAND

#### *Powers of acquisition*

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

**31.**—(1) The Agency may acquire compulsorily so much of the land shown on the land plans as lying within the limits of deviation as may be required for the purposes of constructing, operating or maintaining the scheduled works and any other purposes that are ancillary to the scheduled works and may use any land so acquired for those purposes or for any other ancillary purposes.

(2) This article is subject to article 36 (new rights only to be acquired in certain lands) and article 38 (temporary possession of land for construction purposes).

#### **Application of Part 1 of the 1965 Act**

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

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

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has effect with the following modifications.

(3) Omit section 4 (which provides a time limit for compulsory purchase of land)(b).

(4) In section 4A(1) (extension of time limit during challenge)(c)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3)(d)”; and
- (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 43 (time limit for exercise of powers of acquisition) of the Boston Barrier Order 2017”.

(5) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 43 (time limit for exercise of powers of acquisition) of the Boston Barrier Order 2017”.

(6) In Schedule 2A(e) (counter-notice requiring purchase of land not in notice to treat) after Part 3 insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 21 (protective works), 38 (temporary possession of land for

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(a) 1981 c. 67.

(b) Section 4 was substituted by section 182(1) of the Housing and Planning Act 2016 (c. 22).

(c) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(d) Section 22 was amended by Schedule 8 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(e) Schedule 2A was inserted by paragraph 3 of Part 1 to Schedule 17 of the Housing and Planning Act 2016 (c. 22).

construction purposes) or 39 (temporary possession of land for maintenance of works) of the Boston Barrier Order 2017.”.

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

**33.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) Omit section 5 (earliest date for execution of declaration)(b) and 5A (time limit for general vesting declaration)(c).

(4) In section 5B(1) (extension of time limit during challenge)(d)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3)”; and

(b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 43 (time limit for exercise of powers of acquisition) of the Boston Barrier Order 2017”.

(5) In section 7 (constructive notice to treat), in subsection (1)(a)(e), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(6) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land under article 32 (application of Part 1 of the 1965 Act).

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

**34.**—(1) The Agency may compulsorily acquire such easements or other rights over any land referred to in article 31 (power to acquire land) as may be required for any purpose for which that land may be acquired under that article, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 (other provisions as to divided land) of the 1965 Act (as modified by Schedule 3 (modification of compensation and compulsory purchase enactments for creation of new rights), where the Agency acquires a right over land under paragraph (1) the Agency cannot be required to acquire a greater interest in that land.

(3) Schedule 3 has 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 or article 36 (new rights only to be acquired under or in certain lands) of a right over land by the creation of a new right.

(4) Paragraph (5) applies to land to which this article applies and which is used for the relocation of any apparatus which it is expedient to divert or replace in consequence of the carrying out of the authorised works.

(5) In relation to the land to which this paragraph applies, the power to acquire or create easements or other rights under paragraph (1) is to be treated as also authorising the acquisition or creation by a statutory undertaker in any case where the Secretary of State gives consent in writing for that acquisition or creation.

(6) The reference in paragraph (5) to a “statutory undertaker” means a licence holder within the meaning of Part 1 of the Electricity Act 1989(f), a gas transporter within the meaning of Part 1 of

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(a) 1981 c. 66.

(b) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(c) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(d) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(e) Section 7(1) was substituted by Schedule 18 of the Housing and Planning Act 2016 (c. 22).

(f) 1989 c. 29.

the Gas Act 1986<sup>(a)</sup>, a water undertaker within the meaning of the Water Industry Act 1991<sup>(b)</sup>, a sewerage undertaker, any local authority which is a relevant local authority for the purposes of section 97 (performance of sewerage undertaker's functions by local authorities, etc.)<sup>(c)</sup> of that Act and a public communications provider within the meaning of section 151 (interpretation of Chapter 1) of the Communications Act 2003<sup>(d)</sup>.

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

**35.**—(1) The Agency may compulsorily acquire so much of, or such rights in, the subsoil of the land referred to in article 31 (power to acquire land) 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) Where the Agency acquires any part of, or such rights in, the subsoil of land under paragraph (1) the Agency is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act (as modified by article 32 (application of Part 1 of the 1965 Act)) from applying where the Agency acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **New rights only to be acquired in certain lands**

**36.**—(1) This article applies to the land specified in Schedule 4 (acquisition of new rights only).

(2) In the case of the land specified in columns (1) and (2) of Schedule 4 (acquisition of new rights only), the Agency's power of compulsory acquisition under article 31 (power to acquire land) is limited to the acquisition of such easements or other new rights in the land as it may require for the purposes specified in relation to that land in column (3) of that Schedule.

(3) Where the Agency acquires easements or other new rights specified in Schedule 4 (acquisition of new rights only), article 34 (power to acquire new rights) applies to the same extent as it applies to the acquisition of a new right under that article.

(4) Nothing in this article precludes the Agency from exercising its powers under article 38 (temporary possession of land for construction purposes) in the case of land specified in Schedule 4 (acquisition of new rights only).

### **Rights under or over streets**

**37.**—(1) The Agency may enter upon and appropriate so much of the surface or subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised works and may use the surface, subsoil or airspace for those purposes or any other purpose ancillary to its undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the Agency being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the Agency acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in the case of dispute, under Part 1 of the 1961 Act.

(4) Paragraph (2) does not apply in relation to—

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

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(a) 1986 c. 44, as amended by section 76(2) of the Utilities Act 2000 (c. 27).

(b) 1991 c. 56, as amended by section 36(2) of the Water Act 2003 (c. 37)..

(c) Section 97 was amended by Schedule 22 to the Localism Act 2011 (c. 20), Schedule 8 to the Housing and Regeneration Act 2008 (c. 17) and Schedule 15 to the Government of Wales Act 1998 (c. 38).

(d) 2003 c. 21.

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 (sharing of cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### *Temporary possession of land*

#### **Temporary possession of land for construction purposes**

**38.**—(1) Subject to paragraph (2), the Agency may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of—
  - (i) the land specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works (or any of those works) so specified in column (3) of that Schedule; and
  - (ii) any other land within Order limits in respect of which no notice of entry has been served under section 11 (powers of entry)(a) of the 1965 Act (other than in connection with the acquisition of new rights only) or no declaration has been made under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981(b);
- (b) remove any buildings, apparatus and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on the land; and
- (d) construct any scheduled works in relation to that land and any other works that are required.

(2) Not less than 14 days before entering upon and taking temporary possession of land under this article the Agency must serve notice of the intended entry on the owners and occupiers of the land.

(3) The Agency may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken), after the end of the period of 2 years beginning with the date of completion of the works specified in relation to that land in column (3) of that Schedule; or
- (b) in the case of any other land within Order limits, after the end of the period of 2 years beginning with the date of completion of the works for which temporary possession of the land was taken unless the Agency has, before the end of that period, served a notice of entry under section 11(c) of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Agency must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Agency is not required to replace a building removed under this article or restore land on which any permanent works have been constructed under paragraph (1)(d).

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(a) Section 11 was amended by sections 186(2), 187(2) and 188 of, and Schedule 14 to, the Housing and Planning Act 2016 (c. 22), Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(b) Section 4 was amended by sections 186(2), 187(2) and 188 of, and Schedule 14 to, the Housing and Planning Act 2016 (c. 22).

(c) Section 11 was amended by sections 186(2), 187(2) and 188 of, and Schedule 14 to the Housing and Planning Act 2016 (c. 22), section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.



(5) The Agency must 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, is to be determined under Part 1 of the 1961 Act.

(7) Without affecting article 68 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) 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).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to land referred to in sub-paragraph (1)(a)(i) except that the Agency is not precluded from—

- (a) acquiring new rights over any part of that land under article 34 (power to acquire new rights) or article 36 (new rights only to be acquired in certain lands); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 35 (power to acquire subsoil only).

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

(10) Section 13 (refusal to give possession to acquiring authority)(a) of the 1965 Act applies to the temporary possession of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 32(1) (application of Part 1 of the 1965 Act).

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

**39.—**(1) Subject to paragraphs (2) and (3), at any time during the maintenance period relating to any of the scheduled works, the Agency may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; 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) does not authorise the Agency 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 Agency must serve notice of the intended entry on the owners and occupiers of the land.

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

(6) The Agency must 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.

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(a) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

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

(8) Without affecting article 68 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(a) (further provision as to compensation for injurious affection) 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) of this article.

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

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary possession of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 32(1) (application of Part 1 of the 1965 Act).

(11) In this article, "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.

### *Compensation*

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

**40.**—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must 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 that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

#### **Set-off for enhancement in value of retained land**

**41.**—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set-off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any new rights over land (including the subsoil) under article 34 (power to acquire new rights) or 36 (new rights only to be acquired in certain lands), the tribunal must set-off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised works.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

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(a) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

## *Supplementary*

### **Extinction or suspension of private rights of way etc. over land**

**42.**—(1) Subject to paragraph (6), all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the Agency, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Agency under section 11(1) (powers of entry)(a) of the 1965 Act,

whichever is sooner.

(2) Subject to paragraph (6), all private rights of way over land owned by the Agency which, being within the Order limits, is required for the purposes of this Order, are extinguished on the appropriation of the land for any of those purposes by the Agency.

(3) Subject to paragraph (6), all private rights of way over land of which the Agency takes temporary possession under this Order are suspended and unenforceable for as long as the Agency remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or 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.

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers etc.)(b) applies.

(6) Paragraphs (1), (2) and (3) have effect subject to—

- (a) any notice given by the Agency before—
  - (i) the completion of the acquisition of;
  - (ii) the Agency's appropriation of;
  - (iii) the Agency's entry onto; or
  - (iv) the Agency's taking temporary possession of,the land, that any or all of those paragraphs do not apply to any right of way specified in the notice; and
- (b) any agreement which makes reference to this article made (whether before or after any of the events mentioned in sub-paragraph (a) and before or after the coming into force of this Order) between the Agency and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is mentioned in sub-paragraph (6)(b) is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right of way in question is vested or belongs, it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

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

**43.**—(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 is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 32 (application of Part 1 of the 1965 Act); and

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(a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(b) Section 272 was amended by paragraphs 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 33 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 38 (temporary possession of land for construction purposes) cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the Agency 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 5

### OPERATION OF SCHEDULED WORKS

#### **Power to operate scheduled works**

**44.**—(1) The Agency may operate the scheduled works and among other things may—

- (a) open or close the barrier and the flood gates; and
- (b) regulate water levels in the river by means of the barrier and the flood gates.

(2) Subject to paragraph (3), the power conferred in paragraph (1) is to be exercised to safeguard against flooding.

(3) Paragraph (2) does not prevent the exercise of the power contained in paragraph (1) in order to—

- (a) prevent or alleviate any emergency;
- (b) release flood water;
- (c) ascertain the safest and most effective ways of using the scheduled works, to test their working or to train staff in their operation; or
- (d) facilitate the construction, maintenance or re-laying of any works in or beside the river.

(4) Except when required to be closed for the purposes mentioned in paragraphs (2) or (3), the barrier and the flood gates are to remain open.

(5) When operating the barrier and the flood gates and so far as is consistent with achieving the purpose referred to in paragraph (2), the Agency must have regard to—

- (a) the safety of vessels in the river;
- (b) the requirements of vessels in the river (including the need to have freedom of access to moorings and berths in the river upstream of the barrier);
- (c) the desirability of developing and conserving flora and fauna in the river; and
- (d) any reasonable request of—
  - (i) the Harbour Authority or other navigation authority for the time being for or in connection with their functions; and
  - (ii) the police or other emergency services.

(6) Subject as otherwise expressly provided in this Order, no liability arises in respect of any costs, damages, losses or expenses incurred by any person as a direct or indirect result of—

- (a) any obstruction to, delay of, or other interference with the passage of vessels; or
- (b) any change in the level of water in the river,

occasioned by the operation of the scheduled works unless the costs, damages, losses or expenses are incurred by reason of negligence in their operation.

#### **Misuse of scheduled works, etc.**

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

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

(b) in any other way interferes with the scheduled works or their operation,  
is guilty of an offence and for every such offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### *Navigation*

#### **Navigation etc. in vicinity of barrier**

**46.**—(1) Any person who, other than in an emergency or with some other reasonable cause—

- (a) moors a vessel to any part of Work No.1 without the consent of the Agency;
- (b) allows any vessel to drift in the vicinity of the barrier, except for the purpose of passing through the barrier or waiting to do so; or
- (c) moors a vessel in the vicinity of the barrier so as to obstruct access to or egress from the moveable gate or cause an obstruction to other vessels,

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

(2) In this article, “in the vicinity of the barrier” means on or in the area of water between—

- (a) a point 20 metres upstream (along the centre line of the navigable river) from the northernmost point of the moveable gate comprised in the barrier; and
- (b) a point 20 metres downstream (along the centre line of the navigable river) from the southernmost point of the moveable gate comprised in the barrier.

### *Obstruction etc.*

#### **Removal of vessels**

**47.**—(1) Whenever any vessel is sunk, stranded or abandoned in the river area, or without lawful authority left or moored in that part of the river, the Agency may, after giving (except in an emergency) not less than 21 days’ written notice to the owner of the vessel, unless it is not practicable after reasonable inquiry to ascertain the name and address of the owner, raise, remove, store or otherwise dispose of the vessel.

(2) Subject to article 51 (emergency powers and consents), the power conferred by paragraph (1) is not exercisable by the Agency if—

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

(3) Where a vessel is left or moored adjoining riparian property the Agency must give not less than one month’s notice to the owner or occupier of that property and such owner or occupier may make representations to the Agency as to the proposed raising, removal, storage, or disposal of the vessel.

(4) Any notice given by the Agency under paragraph (1) must—

- (a) identify the vessel in respect of which the notice is served and its approximate location;
- (b) state that if the owner fails to raise and remove the vessel before the expiry of the period specified in the notice, the Agency may raise and remove the vessel and recover all expenses reasonably incurred in doing so; and
- (c) indicate that there is a right to refer the matter to arbitration under article 48 (arbitration in respect of removal of vessels).

(5) The Agency may recover from the owner of any such vessel all expenses reasonably incurred by the Agency in respect of the raising, removal, storage or disposal of the vessel or in raising, removing, storing or disposing of any furniture, tackle and apparel of the vessel or any goods, chattels and effects raised or removed from the vessel.

(6) In any proceedings by the Agency against a person served with a notice under paragraph (1) for the recovery of any expenses which the Agency is entitled to recover from that person under paragraph (5), it is not open to that person to raise any question which could have been raised on a referral to arbitration under article 48.

(7) Subject to paragraph (8), if any vessel to which paragraph (1) applies is not within 6 weeks of its removal by the Agency, proved to the Agency's satisfaction to belong to any claimant, the vessel (together with any such furniture, tackle and apparel) vests in the Agency.

(8) If within 12 months of its removal a claim is made to the vessel by a person who subsequently proves to the satisfaction of the Agency that that person was the owner of the vessel, or has become the owner since the vessel was sunk, stranded, abandoned, left or moored as mentioned in paragraph (1), then the Agency must—

- (a) if the vessel is unsold, permit that person to retake it with any furniture, tackle, apparel, goods, chattels and effects on the vessel upon payment of the expenses referred to in paragraph (5); or
- (b) if the vessel and the furniture, tackle and apparel on the vessel have been sold, pay to that person the amount of the proceeds of such sale after deducting those expenses, and in case such proceeds are insufficient to reimburse the Agency those expenses the deficiency may be recovered from that person by the Agency.

(9) In this article—

“owner”, in relation to any vessel sunk, stranded, abandoned, left or moored as mentioned in paragraph (1), means the owner of the vessel at the time of its sinking, stranding, abandonment, leaving or mooring;

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

“vessel” includes any part of a vessel.

### **Arbitration in respect of removal of vessels**

**48.—**(1) Any person served with a notice by the Agency under article 47(1) (removal of vessels) may, within 21 days of service of the notice, serve a counter-notice on the Agency disputing the notice and stating that—

- (a) the vessel is not sunk, stranded or abandoned in the river lying within the limits of deviation or without lawful authority left or moored in that part of the river; or
- (b) there has been some informality, defect or error in, or in connection with, the notice,

and any dispute under this article is to be determined in accordance with article 67 (arbitration).

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

(3) If and in so far as a dispute under this article is based on the ground of some informality, defect or error in, or in connection with, the notice, the arbitrator must dismiss the dispute if the arbitrator is satisfied that the informality, defect or error was not a material one.

### **Removal of obstructions other than vessels**

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

(2) Subject to paragraph (3), the Agency may after giving not less than 21 days' written notice to the owner of an obstruction or, if the owner is not known, the owner or occupier of any land on which the obstruction is situated, require the owner or occupier to mark, modify or remove the obstruction.

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

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

(4) If a person to whom a notice was given pursuant to paragraph (2) fails to take any action specified by the Agency in that notice the Agency may take that action and recover the reasonable costs of doing so from that person.

(5) In any proceedings by the Agency against any person required to modify, remove or mark an obstruction under paragraph (2) for the recovery of costs which the Agency is entitled to recover under paragraph (4), it is not open to that person to raise any question which could have been raised on a referral to arbitration under article 50 (arbitration in respect of removal of obstructions other than vessels).

(6) The Agency may mark, modify or remove an obstruction in such circumstances as it considers fit.

(7) Before exercising its powers under paragraph (6), the Agency must, if it is reasonably practicable to do so, give not less than 21 days' written notice of its intention to the owner or occupier of any land on which the obstruction is situated.

(8) If an obstruction removed by the Agency under this article is so marked as to be readily identifiable as the property of any person, the Agency must within one month of its coming into the Agency's custody give written notice, in accordance with paragraph (12), to that person and, if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice, it vests in the Agency at the end of that period.

(9) If an obstruction removed by the Agency under this article, which is not marked as described in paragraph (8), is not within 3 months of its coming into the custody of the Agency proved to the Agency's reasonable satisfaction to belong to any person, it vests in the Agency.

(10) The Agency may at such time and in such manner as it thinks fit dispose of anything referred to in paragraph (9) which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience even if at the time it has not vested in the Agency under this article, and if it is sold the proceeds of sale must be applied by the Agency in payment of the expenses incurred by it under this article in relation to the thing, and any balance is—

- (a) to be paid to any person who, within 3 months from the time when the thing came into the custody of the Agency, proves to the reasonable satisfaction of the Agency that the person was the owner of the thing at that time; or
- (b) if within the period referred to in sub-paragraph (a) no person proves that person's ownership at that time, to vest in the Agency.

(11) If an obstruction removed by the Agency under this article—

- (a) is sold by the Agency and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred by it in the exercise of its powers of removal; or
- (b) is unsaleable,

the Agency may recover the deficiency or the whole of the expenses, as the case may be, from the person who was the owner at the time when the thing removed came into the custody of the Agency or who was the owner at the time of its abandonment or loss, if that person caused or knowingly permitted the obstruction to be there.

(12) A notice given under paragraph (7) must specify the thing removed and state that, upon proof of ownership to the reasonable satisfaction of the Agency and payment of the reasonable costs of the raising, removal and storage of the thing, possession may be retaken at the place named in the notice within the time specified in the notice, being not less than 14 days after the date when the notice is served.

(13) In paragraph (1), reference to anything causing an obstruction or impediment to the navigation or use of the river area is a reference to anything causing an obstruction or impediment to a vessel of a size customarily navigated or used on that part of the river.

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

**50.**—(1) Any person required by the Agency to modify, remove or mark an obstruction under article 49(2) (removal of obstructions other than vessels) may within 21 days of being so required serve a counter-notice on the Agency disputing the notice on any of the following grounds which are appropriate in the circumstances of the particular case—

- (a) that the thing required to be marked, removed or modified is not an obstruction;
- (b) that the thing required to be marked, removed or modified is an obstruction which has occurred naturally and that to require its marking, removal or modification is unreasonable;
- (c) where the requirement is to remove the obstruction, that it would be adequate in all the circumstances of the case to mark or modify the obstruction; or
- (d) where the requirement is to modify the obstruction, that it would be adequate in all the circumstances of the case to mark the obstruction,

and any dispute under this article is to be determined in accordance with article 67 (arbitration).

(2) Any person served with a notice under article 49(7) (removal of obstructions other than vessels) may within 21 days of service of the notice serve a counter-notice on the Agency disputing the notice on any of the following grounds which are appropriate in the circumstances of the particular case—

- (a) that the thing the Agency intends to mark, remove or modify is not an obstruction;
- (b) that the thing the Agency intends to mark, remove or modify is an obstruction which has occurred naturally and that to mark, remove or modify it is unreasonable;
- (c) where the Agency intends to remove the obstruction, that it would be adequate in all the circumstances of the case to mark or modify the obstruction; or
- (d) where the Agency intends to modify the obstruction, that it would be adequate in all the circumstances of the case to mark the obstruction,

and any dispute under this article is to be determined in accordance with article 67 (arbitration).

(3) On the hearing of a dispute under this article the arbitrator may confirm, vary or set aside the requirement of the notice, as the case may be.

### **Emergency powers and consents**

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

### *Byelaws*

#### **Byelaws**

**52.**—(1) In addition to its powers to make byelaws under any other enactment, the Agency may make byelaws in relation to the navigation and use of the river area, and for its good management in connection with such navigation and use.



(2) In particular, byelaws under paragraph (1) may be made for all or any of the following purposes—

- (a) for prohibiting or regulating recreational activities;
- (b) for regulating navigation and for the prevention of obstruction to navigation;
- (c) for regulating the speed and movement of vessels;
- (d) for securing the safety of vessels and persons using the scheduled works and of their property, and any property situated within the limits of deviation;
- (e) for regulating the passage of vessels, or any class of vessels, through the moveable barrier gate or over or through other structures, works or apparatus, either generally or in circumstances prescribed by the byelaws; or
- (f) for preventing swimming.

(3) The Agency must not make any byelaws under this article without the consent of the Harbour Authority.

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

(5) Nothing in any byelaw made under this article applies to anything done by the Harbour Authority in the exercise of any of its statutory functions and the byelaws of the Harbour Authority are unaffected by any byelaw made under this article.

(6) Byelaws under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) The provisions of sections 236(3) to (8) and (11) and 238 of the Local Government Act 1972 (which relates to the procedure for making, and evidence of, byelaws)(a) apply to any byelaws made by the Agency under this article.

(8) In its application to byelaws made under this article by the Agency, section 236 of the Local Government Act 1972 has effect as if in subsection (7), after the word “confirm” where it first occurs, the words “with or without modification” were inserted.

(9) The confirming authority for the purposes of section 236 of the Local Government Act 1972 in its application to byelaws made under this article is the Secretary of State.

(10) The Secretary of State may charge the Agency a reasonable fee for the purpose of defraying any administrative expenses incurred by the Secretary of State in respect of byelaws made under this article which are submitted to the Secretary of State for confirmation.

(11) Where in relation to any byelaws submitted to the Secretary of State for confirmation the Secretary of State proposes to make a modification which appears to the Secretary of State to be substantial the Secretary of State must inform the Agency and require it to take any steps the Secretary of State considers necessary for informing persons likely to be concerned with the modification and must not confirm the byelaws until such period has elapsed as the Secretary of State thinks reasonable for consideration of, and comment upon, the proposed modification by the Agency and by other persons who have been informed of it.

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

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(a) 1972 c. 70.

## PART 6

### PROTECTIVE PROVISIONS

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

53. Schedule 6 (statutory undertakers, etc.) has effect.

#### **Protective Provisions**

54. Schedule 7 (protection for electricity, gas, water and sewerage undertakers) and Schedule 8 (protection of Port of Boston) have effect.

#### **Saving for Trinity House**

55. Nothing in this Order prejudices or derogates from any of the powers, rights or privileges, or the jurisdiction or authority, of Trinity House.

#### **Crown rights**

56.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and in particular, nothing in this Order authorises the Agency or any other person to take, use, enter upon or in any manner interfere with any land or hereditament or any rights of any description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Consent under this article may be given unconditionally or subject to such terms or conditions as are considered necessary or appropriate.

#### **Minerals**

57. Nothing in this Order affects the rights of any person entitled to any mine or minerals of any description whatsoever under a street or other land in, on, or adjacent to which the authorised works are constructed to work the mine or get the minerals but this does not affect any liability (whether civil or criminal) of the person so entitled in respect of any damage to the authorised works resulting from the exercise of any such rights.

## PART 7

### MISCELLANEOUS AND GENERAL

#### **Temporary traffic regulation**

58.—(1) Subject to the provisions of this article, the Agency may, so far as is necessary or expedient for the purposes of or in connection with construction of the authorised works—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;

- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) suspend or authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the Agency.

- (2) The powers conferred by paragraph (1) may only be exercised after the Agency has—
- (a) consulted the chief officer of police, the traffic authority and such other persons as it considers necessary and appropriate;
  - (b) taken into consideration any representations made to it by any such persons consulted; and
  - (c) obtained the consent of the traffic authority in whose area the road concerned is situated (which must not be unreasonably withheld or delayed).

(3) The Agency must not exercise the powers conferred by this article in relation to any road unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention to do so to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may, within 7 days of its receipt of notice of the Agency's intention, specify in writing.

(4) Any prohibition, suspension or other provision made by the Agency under paragraph (1) has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking places)(a) of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject.

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the Agency from time to time by subsequent exercise of the powers conferred by paragraph (1).

(6) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(7) The powers conferred on the Agency by this article with respect to any road have effect subject to any agreement entered into by the Agency with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

**Power of disposal, agreements for operation, etc.**

**59.**—(1) Subject to paragraph 2, the Agency may, with the consent of the Secretary of State, sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the authorised works and any land held in connection with them.

(2) Nothing in paragraph (1) requires the Agency to secure the consent of the Secretary of State before transferring ownership of any structures comprised within Work Nos. 3A and 3B to the Harbour Authority.

(3) Without limitation on the scope of paragraph (1), the Agency may enter into and carry into effect agreements with respect to any of the following matters, namely, the construction, maintenance, use and operation of the authorised works, or any part or parts of them, by any other

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(a) Section 32 was amended by Schedule 17 to the Local Government Act 1985 (c. 51) and by paragraph 39 of Schedule 8 to the New Roads and Street Works Act 1991 (c. 22).

person, and other matters incidental or subsidiary to, or consequential on those matters and the defraying of, or the making of contributions towards, the costs of those matters by the Agency or any other person.

(4) Any agreement under paragraph (3) may provide, amongst other things, for the exercise of the powers of the Agency in respect of the authorised works or any part of them and for the transfer to any person of the authorised works or any part of them together with the rights and obligations of the Agency in relation to them.

(5) Where an agreement has been made by virtue of paragraph (3) references in this Order to the Agency include references to the transferee or the lessee.

(6) The exercise of the powers conferred by any enactment by any person further to any sale, lease, charge or disposal under paragraph (1), or any agreement under paragraph (3), is subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Agency.

(7) The Agency must not under this article sell, lease, charge or otherwise dispose of, any rights conferred by article 52 (byelaws).

### **Obstructing execution of Order**

**60.** Any person who, without reasonable excuse, obstructs any person acting under the authority of the Agency in setting out the lines of the scheduled works, or in constructing any authorised work or who interferes with, moves or removes any apparatus belonging to any such person is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Defence of due diligence**

**61.—**(1) In proceedings for an offence under Part 3 (provisions relating to tidal works), it is a defence for the Agency to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) If in any case the defence provided under paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Agency must not, without leave of the court, be entitled to rely on that defence unless, not less than 7 clear days before the hearing, it has served on the prosecutor a notice in writing giving such information as was then in its possession, identifying or assisting in the identification of, that other person.

### **Application of landlord and tenant law**

**62.—**(1) This article applies to any agreement for leasing to any person the whole or any part of the authorised works or the right to operate those works, and any agreements entered into by the Agency with any person for the construction, maintenance, use or operation of the authorised works, or any part of them, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Defence to proceedings in respect of statutory nuisance**

**63.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance)(b) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the Agency for the purposes of or in connection with the exercise of powers conferred by this Order with respect to the authorised works and that the nuisance is attributable to the carrying out of the authorised works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites)(c) of the Control of Pollution Act 1974(d); or
- (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the Agency for the purposes of or in connection with the exercise of powers conferred by this Order with respect to works.

### **Disclosure of confidential information**

**64.** A person who—

- (a) enters a factory, workshop or workplace under the provisions of article 21 (protective works) or article 23 (power to survey and investigate land, etc.); and
- (b) discloses to any person any information obtained as a result of that entry and relating to any manufacturing process or trade secret,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless disclosure is made in the course of that person's performance of a duty in connection with the purposes for which the person was authorised to enter the land.

### **Local legislation**

**65.**—(1) The following do not apply to the extent that they are inconsistent with a provision of, or a power conferred by, this Order—

- (a) any provision of the local enactments specified in Part 1 of Schedule 9 (amendment of local legislation);
- (b) any byelaws or other provisions made under any of those enactments; and
- (c) the local byelaws specified in Part 2 of that Schedule.

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(a) 1990 c. 43. Section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25).

(b) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 5).

(c) Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

(d) 1974 c. 40.

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and to the extent that (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;
- (b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken; or
- (c) action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.

(3) Where any person notifies the Agency in writing that anything done or proposed to be done by the Agency by virtue of this Order would amount to a contravention of a statutory provision of local application, the Agency must as soon as reasonably practicable, and, at any rate within 14 days of receipt of the notice, respond in writing setting out—

- (a) whether the Agency agrees that the action taken or proposed to does or would contravene the provision of local application;
- (b) if the Agency does agree, the grounds (if any) on which the Agency believes that the provision is excluded by this article; and
- (c) the extent of that exclusion.

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

**66.** The Agency must, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections, the land plans, the public rights of way plan and the works plan 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 is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Arbitration**

**67.** Unless otherwise provided in this Order, any difference under any provision of this Order is to 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 giving notice in writing to the other) by the President of the Institution of Civil Engineers.

### **No double recovery**

**68.** Compensation is not payable in respect of the same matter both under this Order and any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

### **Service of notices**

**69.—**(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) with the consent of the recipient and subject to paragraphs (6) to (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 (references to service by post) of the Interpretation Act 1978<sup>(a)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person 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, that person's 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 the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person 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 a 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 is fulfilled where the recipient of the notice or other document has given 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 the recipient requires a paper copy of all or any part of that notice or other document, the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person 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—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

12th December 2017

*David Cooper*  
A Senior Civil Servant, for and on behalf of the  
Secretary of State for Environment, Food and Rural Affairs

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(a) 1978 c. 30.

# SCHEDULES

## SCHEDULE 1

Article 2(1)

### SCHEDULED WORKS

#### **In the Borough of Boston, Lincolnshire**

**Work No.1** — A barrier, with a rising sector gate, across the Haven, at a location situated approximately 100 metres eastwards of the Black Sluice Complex, including reclamation on the left bank of the Haven, the removal of the existing loading jetty on the right bank of the Haven and providing a channel width of 25 metres. Work No.1 includes scour protection and flood defence walls linking to other flood defences, the installation of perimeter fencing and other structures.

**Work No.2** — A building for control and associated purposes in relation to Work No.1, at a location situated on the left bank of the Haven adjacent to the barrier which forms part of Work No.1. Work No.2 includes the construction of hardstanding areas for storage, use by heavy goods vehicles, parking, a crane pad and the installation of perimeter fencing.

**Work No.3A** — A replacement gate across the existing entrance to the Wet Dock, at a location situated 170 metres westwards of Maud Foster Sluice, providing a channel width when open of not less than 18 metres together with an associated structure for control of the replacement gate.

**Work No.3B** — Works to widen the river channel within the existing entrance to the Wet Dock.

**Work No.3C** — Works to widen the river channel within the existing entrance to the Wet Dock.

**Work No.4A** — Flood defence walls along the left bank of the Haven including a sheet piled wall along the existing quay frontage, 360 metres in length, together with a concrete/sheet piled flood wall 610 metres in length, commencing at the termination point of Work No.1 and terminating at the Wet Dock. Work No.4A includes the construction of vehicular access gates, each with an opening width of between 6 and 10 metres, and scour protection.

**Work No.4B** — Flood defence walls along the left bank of the Haven including a concrete flood wall, 180 metres in length, commencing at the Wet Dock and terminating at Maud Foster Sluice. Work No.4B includes the construction of vehicular access gates, each with an opening width of between 6 and 10 metres.

**Work No.5A** — Flood defence walls along the right bank of the Haven including a sheet piled wall with concrete capping beam along the existing embankment, 110 metres in length, commencing at the Black Sluice Complex and terminating at the commencement point of Work No.1.

**Work No.5B** — Flood defence walls along the right bank of the Haven including a sheet piled wall with concrete capping beam along the existing embankment, 430 metres in length, commencing at the termination point of Work No.1 and terminating at TF 3324 4291. Work No.5B includes scour protection and includes the incorporation of an existing surface water discharge pipe.

**Work No.6** — Upgrading of an existing road within the Port of Boston, 650 metres in length, commencing at the existing entrance to the Port of Boston which lies adjacent to St John's Road and terminating at Work No.2.



**Work No.7** — 3no. (11kv) electricity cables (185 metres in length), being a 200 metres diversion of 3no. existing (11kv) electricity cables, commencing at TF 3283 4275 and terminating at the junction of Wyberton Low Road with London Road.

**Work No.8** — Replacement of and extension to an existing grain tower and conveyor system (ship loading facility) at a location adjacent to Work No.4A.

SCHEDULE 2

Article 12

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Borough of Boston, Lincolnshire	Public Footpath Bost/14/1	Footpath stopped up to all traffic between the points marked 'A' and 'B' on the public rights of way plan
	Public Footpath Bost/14/2	Footpath stopped up to all traffic between the points marked 'B' and 'C' on the public rights of way plan
	Public Footpath Bost/14/12	Footpath stopped up to all traffic between the points marked 'B' and 'C' on the public rights of way plan
	Wyberton Low Road (in part)	Street stopped up to vehicular traffic only (other than a section of highway, separated from the footway, of a width not less than 2 metres which shall be retained at all times for use by cyclists) between the points marked 'D' and 'E' on the public rights of way plan

## 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 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 limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44 (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 4—

- (a) in subsection (1), for the words “land is acquired or taken” substitute “a right over land is purchased”; and
- (b) in subsection (1), for the words “acquired or taken from him” substitute “over which the right is exercisable”.

**3.—(1)** Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act;
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 3 to the Boston Barrier Order 2017) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land, the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

**4.—(1)** The 1965 Act has 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 limitation on the scope of sub-paragraph (1), Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act applies 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.

**5.** For section 7 (measure of compensation in case of severance) of the 1965 Act, substitute—

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(a) 1973 c. 26.

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard must be had not only to the extent (if any) to which the value of the land over which 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 the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

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) paragraph 2(3) and 7(2) of Schedule 4 (common land),

are modified so 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.

7. Section 11 (powers of entry)(a) of the 1965 Act is modified so 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 purpose of exercising that right (which is to be deemed for this purpose to have been created on the date of service of the notice); and sections 12(b) (penalty for unauthorised entry) and 13(c) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20(d) (protection for interests of tenants at will etc.) of the 1965 Act applies 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 (interests omitted from purchase) of the 1965 Act is modified so 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.

10. For Schedule 2A of the 1965 Act substitute—

## “SCHEDULE 2A

### COUNTER-NOTICE REQUIRING PURCHASE OF LAND

#### *Introduction*

1. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006(No. 1) and S.I 2009/1307.
  - (b) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
  - (c) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
  - (d) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

Compulsory Purchase (Vesting Declarations) Act 1981(a) as applied by article 33 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) in respect of the land to which the notice to treat relates.

2. In this Schedule, “house” includes any park or garden belonging to a house.

*Counter-notice requiring purchase of land*

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

*Response to counter-notice*

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the acquiring authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

*Determination by Upper Tribunal*

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

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(a) 1981 c. 66, as amended by Part 7 of the Housing and Planning Act 2016 (c. 22).

**12.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

**13.** If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—(1)** If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

**15.** Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 4

Article 36

ACQUISITION OF NEW RIGHTS ONLY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the Order plans</i>	<i>(3)</i> <i>Purpose for which new rights may be acquired</i>
Borough of Boston, Lincolnshire	2	Operation and maintenance of Work Nos. 1, 2, 3A, 3B, 4A, 4B, 8A and 8B
	10, 13	Operation and maintenance of Work Nos. 3A, 3B and 4B
	16	Operation and maintenance of Work Nos. 3A, 3B, 4A and 4B
	17	Operation and maintenance of Work Nos. 4A and 4B
	33, 38, 41	Operation and maintenance of Work No.5B
	46	Operation and maintenance of Work Nos. 4A, 4B, 8A and 8B
	50a, 53a	Operation and maintenance of services associated with Work Nos. 1 and 2
	53b, 59, 61	Operation and maintenance of Work Nos.4A, 8A and 8B
	54	Operation and maintenance of services associated with Work Nos. 1 and 2
	69	Access for operation and maintenance of Work Nos.1, 5A and 5B

SCHEDULE 5

Article 38

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the Order plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
Borough of Boston, Lincolnshire	1, 4	Alternative construction access and construction of authorised works
	3, 28, 29, 30, 31, 32, 49	Construction access
	5	Alternative construction access
	6, 7, 47, 48, 50, 50b, 52, 55, 111, 112, 113, 114	Construction of authorised works
	8	Construction compound and construction of authorised works
	9, 11, 12, 18, 19, 20	Construction of Work Nos. 3A, 3B and 4B
	14	Construction of Work No.4B
	15	Construction of Work Nos. 3A, 3B and 4B and mitigation works
	21	Construction of authorised works and capital dredging works
	22, 23, 23a, 24, 25, 26	Accommodation and mitigation works
	27	Temporary storage of dredged materials
	44	Construction of Work No.4A and Work No.5B and capital dredging works
	50c, 51	Construction of Work No.4A
	53	Construction of Work Nos. 4A, 8A and 8B
	62	Capital dredging works and provision of temporary mooring facilities for fishing vessels
	66, 67	Capital dredging works
	70	Construction access for Work No.7
	71, 107, 108	Construction of Work No.7
72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 110	Protective works	
109	Construction of Work No.5A and Work No.5B	



## STATUTORY UNDERTAKERS, ETC.

*Apparatus of statutory undertakers etc. on land acquired*

1.—(1) Sections 271 to 274(a) (extinguishment of rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) of the 1990 Act apply in relation to any land acquired or appropriated by the Agency 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(b), which provide for the payment of compensation) 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 is entitled to recover from the Agency compensation in respect of expenditure reasonably incurred by that person, 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) does 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,

is entitled to recover from the Agency compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the 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, do not have effect in relation to apparatus as respects which Part 3 of the 1991 Act applies.

(6) In this Schedule—

“public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(c); and

“public utility undertakers” has the same meaning as in the 1980 Act(d).

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(a) 2008 c. 29.

(b) Section 279(3) was amended by paragraphs 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by S.I. 2009/1307.

(c) 2003 c. 21.

(d) 1980 c. 66 as amended by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15) and section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29).

## PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

### *Interpretation*

**1.**—(1) The following provisions of this Schedule have effect unless otherwise agreed in writing between the Agency and the specified undertaker concerned.

(2) The provisions of Schedule 6 (statutory undertakers, etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Schedule applies.

**2.** In this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the specified undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989<sup>(a)</sup>) belonging to or maintained by that specified undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
  - (i) mains, pipes or other apparatus belonging to or maintained by that specified undertaker for the purposes of water supply; and
  - (ii) mains, pipes or other apparatus that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe) of the Water Industry Act 1991<sup>(b)</sup>; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the specified undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewer, drain or sewage disposal works, at future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over, across, along or upon land;

“plans” includes sections, specifications and method statements; and

“specified undertaker” means—

- (a) Western Power Distribution (East Midlands) plc, whose registered office is Avonbank, Feeder Road, Bristol, BS2 0TB; and

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(a) 1989 c. 29.

(b) 1991 c. 56.

(b) Anglian Water Services Limited, whose registered office is Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire, United Kingdom, PE29 6XU, or any person succeeding any such company as a licence holder within the meaning of Part 1 of the Electricity Act 1989, a gas transporter within the meaning of Part 1 of the Gas Act 1986(a), a water undertaker within the meaning of the Water Industry Act 1991, or as a sewerage undertaker, and “the specified undertaker” in relation to any apparatus means the specified undertaker to whom the apparatus belongs or by whom it is maintained.

#### *On-street apparatus*

3. This Schedule does not apply to anything done or proposed to be done in relation to or affecting apparatus in respect of which the relations between the Agency and the specified undertaker are regulated by the provisions of Part 3 of the 1991 Act.

#### *Acquisition of land*

4.—(1) Regardless of any provision in this Order or anything shown on the deposited plans the Agency must not acquire any apparatus other than by agreement with the specified undertaker.

(2) The Agency may, in the exercise of the powers conferred by this Order, acquire or appropriate any interest in any land in which any apparatus is placed and, following the removal of such apparatus in accordance with the provisions of this Schedule, any rights in that land relating to that apparatus are extinguished, but that apparatus must not be removed under this Schedule and any right of a specified undertaker to use, maintain or renew that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the specified undertaker in question.

#### *Removal of apparatus*

5.—(1) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the Agency requires the removal of any apparatus placed in that land, it must give to the specified undertaker in question written notice of that requirement, together with plans of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a specified undertaker reasonably needs to remove any of its apparatus) the Agency must, subject to sub-paragraph (3), afford to the specified undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the Agency and for the subsequent use, maintenance and renewal of that apparatus.

(2) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the Agency, or the Agency is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the specified undertaker in question must, on receipt of a written notice to that effect from the Agency, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(3) The obligation imposed on the specified undertaker under sub-paragraph (2) does not extend to the exercise by the specified undertaker of any power to acquire any land or rights in land by compulsory purchase order.

(4) Any alternative apparatus to be constructed in land of the Agency under this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the specified undertaker in question and the Agency or in default of agreement settled by arbitration in accordance with article 67 (arbitration).

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(a) 1986 c. 44.

(5) The specified undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 67 (arbitration), and after the grant to the specified undertaker of any such facilities and rights as are referred to in sub-paragraphs (1) or (2), proceed with all reasonable despatch to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the Agency to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the Agency gives notice in writing to the specified undertaker in question that it desires itself to execute any work to which this sub-paragraph applies, that work, instead of being executed by the specified undertaker, may be executed by the Agency with the prior written consent of the specified undertaker (which must not be unreasonably withheld or delayed and is to be subject to any such conditions as are reasonable and proper to protect the apparatus) in accordance with plans and in a position agreed between the specified undertaker and the Agency or, in default of agreement, determined by arbitration, with all reasonable despatch under the superintendence, if given, and to the reasonable satisfaction of the specified undertaker.

(7) In carrying out any work under sub-paragraph (6) the Agency must comply with all statutory obligations which would have been applicable had the works been carried out by the specified undertaker.

(8) Sub-paragraph (6) applies to any part of any work necessary in connection with construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land of the Agency.

(9) Nothing in sub-paragraph (6) authorises the Agency to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

#### *Facilities and rights for alternative apparatus*

**6.—**(1) Where, in accordance with the provisions of this Schedule, the Agency affords to a specified undertaker facilities and rights for the construction, use, maintenance and renewal in land of the Agency of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the Agency and the specified undertaker in question or in default of agreement settled by arbitration in accordance with article 67 (arbitration).

(2) In settling those terms and conditions in respect of the alternative apparatus to be constructed across or along the authorised works, the arbitrator must—

- (a) give effect to all reasonable requirements of the Agency for ensuring the safety and efficient operation of the authorised works and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Agency or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions if any applicable to the apparatus constructed across or along the authorised works for which the alternative apparatus is to be substituted and to any other reasonable requirements of the specified undertaker.

(3) If the facilities and rights to be afforded by the Agency in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator more or less favourable on the whole to the specified undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation to or by the Agency by or to that specified undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

*Retained apparatus: protection and plan approval*

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the Agency under paragraph 5(1), the Agency must submit to the specified undertaker in question plans of those works.

(2) Those works are to be executed only in accordance with the plans submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the specified undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and an officer of the specified undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by the specified undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which the plans under sub-paragraph (1) are submitted to it.

(4) If a specified undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the Agency, reasonably requires the removal of any apparatus and gives written notice to the Agency of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the Agency under paragraph 5(1).

(5) Nothing in this paragraph precludes the Agency from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, new plans instead of the plans previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plans.

(6) The Agency is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the specified undertaker in question notice as soon as is reasonably practicable and plans of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) Nothing in sub-paragraph (6) entitles the Agency to carry out works to any apparatus but, upon receipt of notice from the Agency, the specified undertaker must proceed to carry out such works as may be required without unreasonable delay.

*Expenses*

8.—(1) Subject to the following provisions of this paragraph, the Agency must repay to a specified undertaker the reasonable expenses incurred by that specified undertaker in, or in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Schedule (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of facilities and rights or exercise of statutory powers for such apparatus);
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the Agency of any power under this Order; and
- (c) the survey of any land, apparatus or works; the inspection, superintendence and monitoring of works; or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by the Agency of any power under this Order; and any other work or thing rendered reasonably necessary in consequence of the exercise by the Agency of any such power,

within a reasonable time of being notified by the specified undertaker that it has incurred such expenses.

(2) The value of any apparatus removed under the provisions of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

- (a) alternative 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, except where this has been solely due to using the nearest currently available type; 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 situated,

and the placing of apparatus of that type or capacity or those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Agency or, in default of agreement, is not determined by arbitration in accordance with article 67 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule 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 specified undertaker in question by virtue of sub-paragraph (1), is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as placing of apparatus of greater dimensions than those of the existing apparatus, except in a case where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by 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 must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a specified undertaker in respect of works by virtue of sub-paragraph (1) must, 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 specified undertaker any financial benefit by deferment of the time for renewal of the apparatus in the normal course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30th June 1992, as revised and re-issued from time to time.

(6) In any case where work is carried out by the Agency under paragraphs 5(6) to (8) and, if such work had been carried out by the specified undertaker, the repayment made to the specified undertaker under sub-paragraph (1) would fall to be reduced under sub-paragraphs (3) to (5), the specified undertaker must pay to the Agency such sum as represents the amount of that reduction.

#### *Indemnity*

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of any of the authorised works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a specified undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any specified undertaker, the Agency must bear and pay the cost reasonably incurred by that specified undertaker in making good such damage or restoring the supply, and must—

- (a) make reasonable compensation to that specified undertaker for any other expenses, loss, damages, penalty or costs incurred by the specified undertaker; and
- (b) indemnify the specified undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or incurred by, the specified undertaker,

by reason or in consequence of any such damage or interruption; and the fact that any act or thing may have been done by the specified undertaker on behalf of the Agency or in accordance with plans approved by the specified undertaker or in accordance with any requirement of the specified

undertaker or under its supervision does not, subject to sub-paragraph (2), excuse the Agency from any liability under the provisions of this paragraph.

(2) Nothing in sub-paragraph (1) imposes any liability on the Agency with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a specified undertaker, its officers, servants, contractors or agents.

(3) A specified undertaker must give the Agency reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the Agency, which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

#### *Access*

**10.** If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the Agency must provide such alternative means of access to that apparatus as will enable the specified undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

#### *Cooperation*

**11.** Where in consequence of the proposed construction of any of the authorised works, the Agency or the specified undertaker requires the removal of apparatus under paragraph 5(1) or the specified undertaker makes requirements for the protection or alteration of apparatus under paragraph 7(2), the Agency must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and the specified undertaker must use all reasonable endeavours to co-operate with the Agency for that purpose.

#### *Exercise of safeguarding and survey powers*

**12.—**(1) The Agency must, so far as is reasonably practicable, exercise the powers conferred by article 21 (protective works) so as not to obstruct or render less convenient the access to any apparatus.

(2) The Agency must not, in the exercise of the powers conferred by section 11(3) (powers of entry) of the 1965 Act, as applied by this Order, or by article 23 (power to survey and investigate land, etc.), make any trial holes which interfere with any apparatus without the consent of the specified undertaker (which must not be unreasonably withheld).

#### *Arbitration*

**13.** Any difference arising between the Agency and a specified undertaker under this Schedule (other than a difference as to its meaning or construction) must be determined by arbitration in the manner provided by article 67 (arbitration) and in determining any difference under this Schedule the arbitrator may, if the arbitrator thinks fit, require the Agency to execute any temporary or other works so as to avoid, so far as may be reasonably possible, interference with the use of any apparatus.

## PROTECTION OF PORT OF BOSTON

1. The following provisions of this Schedule have effect unless otherwise agreed in writing between the Agency and the Harbour Authority.

2. In this Schedule—

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

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, and “construct” and “constructed” are to be construed accordingly;

“erosion” means any erosion of the bed or banks of the river or any jetty or other structure of whatever nature owned or occupied by the Harbour Authority;

“harbour property” means any land or works owned or administered by the Harbour Authority as part of its harbour undertaking at the Port of Boston;

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

“specified work” means so much of any permanent or temporary work authorised by this Order (which includes, for the avoidance of doubt, any removal of gravel or other material, any dredging or similar work and any geotechnical investigations that may be undertaken) as is on, in, under or over—

- (a) the surface of land below the level of mean high water springs forming part of the river; or
- (b) any other harbour property.

3.—(1) The Agency must not exercise the powers conferred by this Order to acquire or take temporary possession of or acquire new rights over any land held by the Harbour Authority as part of its statutory undertaking except with the consent of the Harbour Authority.

(2) The consent of the Harbour Authority under this paragraph must not be unreasonably withheld but may be given subject to such reasonable requirements as the Harbour Authority may make for the purpose of performing its statutory functions.

4.—(1) Before beginning any operations for the construction of any specified work (but this requirement does not apply to minor works of maintenance or repair), the Agency must submit to the Harbour Authority plans of the work and such further particulars available to it as the Harbour Authority may within 14 days of the submission of the plans reasonably require.

(2) Any specified work must not be constructed except in accordance with such plans as may be approved in writing by the Harbour Authority or determined to be in accordance with article 67 (arbitration) of this Order.

(3) Any approval of the Harbour Authority required under this paragraph must not be unreasonably withheld and—

- (a) shall be deemed to be given if it is neither given or refused (with an indication of the grounds for refusal) within 28 days of the submission of the plans or where further particulars are submitted under sub-paragraph (1), within 28 days of the submission of those particulars; and
- (b) may be given subject to such reasonable requirements as the Harbour Authority may make for the protection of—
  - (i) navigation in, or the flow or regime of, the river; or
  - (ii) the use of its land other than such parts as are required for the specified works for the purposes of performing its statutory functions.



5. The Agency must give to the Harbour Authority not less than 14 days' written notice of its intention to commence the construction of a specified work (but this requirement does not apply to minor works of maintenance or repair) and, not more than 14 days after completion of such construction, must give to the Harbour Authority written notice of such completion.

6. The Agency must carry out all operations for the construction of any specified works with all reasonable dispatch to the reasonable satisfaction of the Harbour Authority so that navigation in, or the flow or regime of, the river and the exercise of the Harbour Authority's statutory functions do not suffer more interference than is reasonably practicable and the Harbour Authority shall be entitled by its officer at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

7. After the purpose of any temporary works has been accomplished the Agency must with all reasonable dispatch, or after a reasonable period of notice in writing from the Harbour Authority requiring the Agency so to do, remove any such temporary works or any materials relating thereto which may have been placed below the level of high water by or on behalf of the Agency; and, on failing to so do within a reasonable period after receiving such notice, the Harbour Authority may remove the same and may recover the reasonable costs of so doing from the Agency.

8.—(1) If—

- (a) during the construction of a tidal work or within 10 years after the completion of that work and wholly or partly in consequence of its construction; or
- (b) during the exercise of the powers conferred by article 6 (power to dredge etc.) of this Order or within 10 years after and wholly or partly in consequence of the exercise of those powers,

there is caused or created an accumulation or erosion which results or is likely to result in interference with navigation or damage to harbour property, the Agency must, if so requested by the Harbour Authority acting reasonably and having regard in particular to its and the Agency's statutory functions, remedy such accumulation or erosion to the extent attributable to such construction or exercise of powers in the manner specified in sub-paragraph (3) and, if it refuses or fails to do so, the Harbour Authority may itself cause the work to be done and may recover the reasonable cost of doing so from the Agency.

(2) If any such accumulation or erosion in consequence of such construction or exercise of the powers conferred under article 6 (power to dredge etc.) arises within the said period of 10 years and is remedied in accordance with sub-paragraph (1), any recurrence of such accumulation or erosion must, from time to time, if reasonably so required to do by the Harbour Authority after notice in writing to it from the Agency and having regard in particular to its and the Agency's statutory functions, be so remedied by the Agency during the said period of 10 years and at any time thereafter, save that the Agency's obligation under this paragraph shall cease if, following the remedying of any accumulation or erosion, a period of 10 years elapses without any further accumulation or erosion being caused or created in consequence of such construction or exercise.

(3) For the purposes of sub-paragraph (1) and (2) above—

- (a) in the case of an accumulation, the remedy must be its removal; and
- (b) in the case of erosion, the remedy must be the carrying out of such reconstruction works and other protective works or measures as may be necessary.

(4) In the event that any surveys, inspection, tests or sampling establish that such accumulation or erosion may have been caused in any event by factors other than the construction of a tidal work or the exercise of the powers conferred by article 6 (power to dredge etc), the Agency is liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise.

(5) For the purposes of sub-paragraph (1) the date of completion of a work is the date on which it is brought into use.

9. The Agency must pay to the Harbour Authority the reasonable costs of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or within five years of the completion of and in consequence of the construction of a tidal work and afford

to the Harbour Authority such facilities as it may reasonably require for the placing and maintenance on any tidal work of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

**10.** Without affecting the other provisions of this Schedule, the Agency must be responsible for, and make good to the Harbour Authority, all costs which may reasonably be incurred by or occasioned to the Harbour Authority by reason of or arising from or in connection with—

- (a) the carrying out of surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river) where the Harbour Authority has reasonable cause to believe that the construction of any of the tidal works or the exercise of the powers conferred by article 6 (power to dredge etc.) of this Order is causing or has caused any such accumulation or erosion;
- (b) the surveillance, co-ordination and regulation of traffic within the Port of Boston which becomes reasonably necessary by reason of the exercise or the prospective exercise by the Agency of its powers to close the river or any part of the river to navigation under article 17 (temporary closing of the river in connection with works) of this Order.

**11.—(1)** The Agency must indemnify the Harbour Authority from all claims, demands, proceedings or damages, which may be made or given against, or recovered from the Harbour Authority and any costs or expense reasonably incurred by the Harbour Authority by reason of any damage to the bed or banks of the river or other harbour property which is caused by the construction, maintenance or failure of any specified work or any act or omission of the Agency, its contractors, agents or employees whilst engaged upon the work.

(2) The Harbour Authority must give to the Agency reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand must be made without the consent of the Agency, which, if it notifies the Harbour Authority that it desires to do so, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**12.** Nothing in paragraph 11 imposes any liability on the Agency with respect to any damage to the extent that it is attributable to any prior defect, want of maintenance or want of repair to the beds or banks of the river or other harbour property or to the act, neglect or default of the Harbour Authority, its officers, servants, contractors or agents but 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 Harbour Authority, or to its satisfaction, or in accordance with a determination under article 67 (arbitration) of the Order, does not (in the absence of negligence on the part of the Harbour Authority, its officers, servants, contractors or agents) relieve the Agency from any liability under the provisions of this Schedule.

**13.** Save to the extent expressly provided for nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the Harbour Authority at the commencement of this Order.

SCHEDULE 9

Article 65

AMENDMENT OF LOCAL LEGISLATION

PART 1

LOCAL ENACTMENTS

<i>Year</i>	<i>Chapter</i>	<i>Title</i>	<i>Section</i>
1812	c. 105	Boston Port and Harbour Act	1 (works to be done for the improvement of the Harbour, &c.) 38 (power to remove goods lying on quays beyond forty-eight hours) 46 (penalty on throwing ballast or rubbish into the harbour) 48 (penalty on laying gravel, &c. nearer the front of any quays than three feet) 52 (persons destroying works, to be transported for seven years)
1812	c. 108	Witham Navigation and Drainage Act	93 (regulation as to mooring vessels and removing obstructions) 96 (penalty on persons misusing the locks , or doing other damage to the navigation) 97 (penalty on destroying the works) 98 (punishment of persons damaging fences) 99 (lords of manors and landowners may make wharfs) 100 (but if not done, the company may make wharfs, &c.)
1880	c. cliii	River Witham Outfall Improvement Act	10 (maintenance of works) 23 (power to remove obstructions)
1881	c. cxii	Boston Dock Act	5 (power to make dock and railway, &c.) 6 (power to make subsidiary works)
1925	c. lxxi	Land Drainage (Black Sluice) Provisional Order Confirmation Act	9 (penalties for obstructing or injuring drains or banks)

**PART 2**  
**BYELAWS**

<i>(1)</i> <i>Title</i>	<i>(2)</i> <i>Byelaw to be disapplied</i>
Boston Dock Byelaws 1947	<p>Byelaw 17 (opening of gates and sluices)</p> <p>Byelaw 26 (deposit of refuse and rubbish)</p> <p>Byelaw 27 (master to deliver account of ballast and no ballast to be discharged without permission)</p> <p>Byelaw 28 (timber and goods)</p> <p>Byelaw 29 (obstruction, wilful damage, hindrance of corporation's officers, etc.)</p> <p>Byelaw 40 (persons not to remain on gates or bridges whilst being swung)</p> <p>Byelaw 44 (vehicles, goods on quays, etc.)</p> <p>Byelaw 45 (vehicles and horses)</p>
Black Sluice Internal Drainage Board Complete Land Drainage Byelaws 1988	<p>Byelaw 3 (Control of introduction of water and increase in flow or volume of water)</p> <p>Byelaw 4 (Control of sluices, etc.)</p> <p>Byelaw 6 (Diversion or stopping up of watercourses)</p> <p>Byelaw 7 (Detrimental substances not to be put into watercourses)</p> <p>Byelaw 10 (No obstructions within 9 metres of the edge of watercourse)</p> <p>Byelaw 14 (Vehicles not to be driven on banks)</p> <p>Byelaw 15 (Banks not to be used for storage)</p> <p>Byelaw 16 (Not to dredge or raise gravel, sand, etc.)</p> <p>Byelaw 17 (Fences, excavations, pipes, etc.)</p> <p>Byelaw 18 (Tidal outfalls)</p> <p>Byelaw 19 (Interference with sluices)</p> <p>Byelaw 20 (Mooring of vessels)</p> <p>Byelaw 21 (Unattended vessels)</p> <p>Byelaw 24 (Damage to property of the Board)</p>
Witham Fourth District Internal Drainage Board Byelaws 1989	<p>Byelaw 3 (Control of introduction of water and increase in flow or volume of water)</p> <p>Byelaw 4 (Control of sluices, etc.)</p> <p>Byelaw 6 (Diversion or stopping up of watercourses)</p> <p>Byelaw 10 (No obstructions within 9 metres of the edge of watercourse)</p> <p>Byelaw 14 (Vehicles not to be driven on banks)</p> <p>Byelaw 15 (Banks not to be used for storage)</p> <p>Byelaw 16 (Not to dredge or raise gravel, sand, etc.)</p> <p>Byelaw 17 (Fences, excavations, pipes, etc.)</p> <p>Byelaw 18 (Tidal outfalls)</p> <p>Byelaw 19 (Interference with sluices)</p> <p>Byelaw 20 (Mooring of vessels)</p>

<i>(1)</i> <i>Title</i>	<i>(2)</i> <i>Byelaw to be disapplied</i>
	Byelaw 21 (Unattended vessels) Byelaw 24 (Damage to property of the Board)

## **EXPLANATORY NOTE**

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

This Order authorises the Environment Agency (“the Agency”) to construct and operate a new tidal barrier with a moveable gate across the river Witham (also known in this location as the Haven) in Boston, Lincolnshire, together with a new building to enable operation of the barrier, new flood defence walls on both banks of the Haven, a replacement gate across the entrance to the existing Wet Dock and to execute ancillary works, including dredging of the river.

The purpose of this Order is to improve the current standard of protection from tidal flooding within Boston, Lincolnshire. The Order confers the necessary powers on the Agency to acquire, compulsorily or by agreement, land and rights in land and to use land for the purposes of the works and confers other powers in connection with the construction, operation and maintenance of the works.

A copy of the Order plans and the book of reference referred to in this Order and certified in accordance with article 66 of this Order (Certification of plans, etc.) may be inspected free of charge during normal working hours at the offices of the Environment Agency at Kingfisher House, Goldhay Way, Orton Goldhay, Peterborough, Cambridgeshire PE2 5ZR.

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