

---

STATUTORY INSTRUMENTS

---

**2022 No. 299**

**The Bridgwater Tidal Barrier Order 2022**

**PART 5**

**OPERATION OF SCHEDULED WORKS**

*Obstruction etc.*

**Removal of vessels**

**46.**—(1) Whenever any vessel is sunk, stranded, abandoned, or without lawful authority left or moored, in the river area, the Agency may, after giving (except in an emergency) not less than 21 days' written notice to the owner of the vessel, raise, remove, store or otherwise dispose of the vessel.

(2) The requirement to give notice in paragraph (1) does not apply in any case where it is not practicable after reasonable inquiry to ascertain the name and address of the owner.

(3) Without prejudice to article 50 (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) 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) 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.

(5) 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 47 (arbitration in respect of removal of vessels).

(6) 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—

- (a) the vessel,
- (b) any furniture, tackle and apparel, goods chattels and effects of the vessel, or
- (c) any goods, chattels and effects raised or removed from the vessel.

(7) In any proceedings by the Agency against the owner of the vessel for the recovery of any expenses which the Agency is entitled to recover under paragraph (6), it is not open to that person to raise any question which could have been raised on a referral to arbitration under article 47.

(8) Subject to paragraph (9), 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, apparel, goods, chattels and effects) vests in the Agency.

(9) 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 (6) and upon the Agency so permitting, the vessel (together with any furniture, tackle, apparel, goods, chattels and effects on the vessel) vests in that person;
- (b) if the vessel (together with any furniture, tackle, apparel, goods, chattels and effects 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.

(10) In this article—

“owner”, in relation to any vessel sunk, stranded, abandoned, left or moored, means the owner of the vessel at the time of its sinking, stranding, abandonment, leaving or mooring save where the context expressly states otherwise;

“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;

“vessel” includes any part of a vessel.

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

**47.—**(1) Any person served with a notice by the Agency under article 46(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, abandoned, or without lawful authority left or moored, in the river area; or
- (b) there has been some informality, defect or error in, or in connection with, the notice.

(2) Any dispute under this article is to be determined in accordance with article 68 (arbitration).

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

(4) 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**

**48.—**(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 49 (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) Without prejudice to article 50 (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) 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 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 49 (arbitration in respect of removal of obstructions other than vessels).

(6) 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 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.

(7) A notice given under paragraph (6) 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.

(8) If an obstruction removed by the Agency under this article, which is not marked as described in paragraph (6), 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.

(9) The Agency may at such time and in such manner as it thinks fit dispose of anything referred to in paragraph (8) 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) otherwise, to vest in the Agency.

(10) 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 of the item removed at the time of its abandonment or loss, if that person caused or knowingly permitted the obstruction to be there.

(11) 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 in that area.

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

**49.**—(1) Any person served by the Agency with a notice under article 48 (removal of obstructions other than vessels) may, within 21 days of being served, serve a counter-notice on the Agency disputing the notice on any of the following grounds—

- (a) that the item the Agency required to be marked, removed or modified is not an obstruction,
- (b) that the item required to be marked, removed or modified is an obstruction which has occurred naturally and that to mark, remove or modify it 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.

(2) Any dispute under this article is to be determined in accordance with article 68 (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**

**50.** The Agency's powers under articles 46 (removal of vessels) and 48 (removal of obstructions other than vessels) may be exercised by the Agency in an emergency without prior notice to the owner or Harbour Authority provided that the Harbour Authority is informed of the action as soon as possible afterwards.